

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN BENCH "DB", DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA Nos. 8 & 9/DDN/2022
Assessment Years: 1999-2000 & 2000-01

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| ACIT, Circle-1(1)(1), Dehradun | Vs. | Senior Citizen Home Complex Welfare Society, H-11, Senior Citizen Home Complex, Sector-P4, Noida |
| | | PAN: AAAAS32020 |
| (Appellant) | | (Respondent) |

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| Assessee by | Sh. M.R. Sahu, CA |
| Department by | Sh. S.K. Chaterjee, CIT(DR) |

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| Date of hearing | 08.01.2025 |
| Date of pronouncement | 27.01.2025 |

ORDER

PER SATBEER SINGH GODARA, JM

These Revenue's twin appeals ITA Nos. 8 & 9/DDN/2022 for assessment years 1999-2000 & 2000-01, arise against the Commissioner of Income Tax (Appeals)-4, Kanpur's common order dated 17.09.2024 passed in DIN No. ITBA/APL/M/250/2021-22/1035661056(1) involving proceedings under section 153A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties at length. Case files perused.
3. The Revenue's "lead" appeal ITA No.8/DDN/2022 for AY 1999-2000 raises the following substantive grounds:

1. *On facts and circumstances of the case and in law, the assessee had failed to furnish books of accounts even during the appellate proceedings even though copy of seized material was provided to the assessee as per the directions of the Hon'ble High Court, Allahabad (Order dt 08.03.2006 in W.P. No. 447/448 and 449 of 2006 and Order dt 01.03.2007 in W.P.No.245 of 2007). The Ld.CIT(A) failed to adjudicate on non-furnishing of books which is a sine qua non for accepting the book results of the assessee.*
2. *On facts and circumstances of the case and in law, the Ld.CIT(A) failed to adjudicate on the additional evidence the assessee had submitted i.e. valuation report for the project at Dehradun and Noida. The Ld.CIT(A) has not given any observations as to how the valuation report submitted by the assessee as an additional evidence is correct when the assessee was unable to produce books in the first place i.e. on one hand the assessee is submitting valuation report and on the other hand the assessee is silent on the issue of non-furnishing of books of accounts.*
3. *The order of the Ld. CIT(A) is therefore erroneous in law and on facts of the case and is liable to be set aside.*

4. Suffice to say, it emerges during the course of hearing that the learned Assessing Officer had framed his section 153A r.w.s. 143(3) assessment on 28.12.2006 in furtherance to the department's search action on 22.02.2005 at the assessee's business and residential premises thereby "protectively" adding an amount of Rs.1,12,16,591/- representing estimated 15% of net rate on advance from members etc., which stands reversed in the lower appellate discussion, reading as under:

“7.1 in the Ground of appeal no. (i) to (ix), the assessee has challenged the addition on presumptive basis and rejection of books of accounts without invoking provisions of section 145(3) of IT Act. It has been submitted that AO erred by making addition on presumptive basis @ 15% of the WIP as appearing in the books of accounts of the assessee and observing that expenses have been inflated. The appellant submitted that the books of accounts are maintained, project completion method followed, no incriminating documents could be found during search, still the addition has been made on estimation basis. The appellant submits that the society is functioning on the concept of mutuality, it is formed on the basis of no profit no loss and hence no taxable profit is generated in its hands, which may be subjected to tax. As already discussed, the income earned from the construction/development activities needs to be taxed in the hands of Sh. Surendra Uppal. The total protective addition of Rs. 7,65,62,431/- has been made in the hands of the appellant and the same has been made on substantive basis in the hands of Sh. Surendra Uppal. The Ld. CIT Appeal in his appellate orders passed in these years vide orders dt. 31.12.2010 deleted these protective additions since the same were made in the hands of Sh. Surendra Uppal on substantive basis. Even if it is considered that the entire project valued at Rs. 88,33,73,822/- as estimated by the AO by considering WIP of various years, this income is more than 8% of the same, which comes at Rs. 7,06,69,905/-. Therefore it is observed that the income from the project under consideration has been rightfully taxed on substantive basis in the hands of Sh. Surendra Uppal and the same cannot be taxed doubly in the hands of the appellant. Respectfully following the decision of Ld. CIT Appeal Meerut, ie. the first appellate authority in this case, these protective additions are deleted and it is observed that the same are rightfully made in the hands of Sh. Surendra Uppal on substantive basis since he was the developer/builder and the appellant society roped him in for this purpose and the society was functioning on no profit no loss basis and had in no way earned any taxable profit. Therefore it is concluded that the substantive addition made 15% of WIP in various years in the hands of the appellant is not correct Therefore the same is deleted. Further the protective addition made in the hands of the appellant @60% of the cash withdrawals from the banks is rightfully deleted by Ld. CIT Appeal Meerut in his first appellate orders and this decision is confirmed.”

5. The Revenue could hardly dispute the clinching fact that the impugned assessment herein is “unabated” one once the assessment year before us is AY 1999-2000 and the search had

taken place very well thereafter on 22.02.2005. This is indeed coupled with the fact that the impugned addition is further not based on any specific seized material indicating assessee's undisclosed income which forms a condition precedent as per PCIT Vs. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212. We further reiterate that the addition made herein is only a protective one wherein the corresponding substantive addition already stands upheld, as stated very fairly at the Revenue's behest. It is in the light of this factual backdrop that we do not see any merit in the instant "lead" appeal ITA No. 8/DDN/2022 and uphold the learned CIT(A)'s action under challenge in very terms.

6. Same order to follow in the Revenue's latter appeal ITA No. 9/Del/2022 since involving identical set of facts and issues.

6. No other ground or argument has been pressed.

7. These Revenue's twin appeals ITA Nos. 8 & 9/DDN/2022 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 27th January, 2025

**Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Dated: 27th January, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi