

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. S. Rifaur Rahman, Accountant Member**

ITA No. 3664/Del/2012 : Asstt. Year: 2006-07

ACIT, Central Circle-03, New Delhi-110055	Vs	M/s Mahagun Realtors (P) Ltd., (Represented by Mahagun India (P) Ltd. after amalgamation), B-66, Vivek Vihar, Delhi-110095
(APPELLANT)		(RESPONDENT)
PAN No. AAECM1286B		

CO No. 300/Del/2012 : Asstt. Year: 2006-07

M/s Mahagun Realtors (P) Ltd., (Represented by Mahagun India (P) Ltd. after amalgamation), B-66, Vivek Vihar, Delhi-110095	Vs	ACIT, Central Circle-03, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAECM1286B		

**Assessee by : Dr. Rakesh Gupta, Adv. &
Sh. Shrey Jain, Adv.
Revenue by : Ms. Baljeet Kaur, CIT-DR**

Date of Hearing: 28.01.2025

Date of Pronouncement: 27.02.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

These Revenue's appeal and assessee's cross objection ITA No. 3664/Del/2012 and CO No. 300/Del/2012 for Assessment Year 2006-07, arise against the CIT(A)-II, Delhi's order dated 30.04.2012 in case No. 76/11-12, in proceedings u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case files perused.
3. The Revenue's instant appeal ITA No. 3664/Del/2012 raises the following substantive grounds:

"1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.29,35,260/- made u/s 50C/69C of the Income Tax Act, 1961 in respect of investment in purchase of property at B-41, Chander Nagar, Ghaziabad without appreciating the fact that the real investment exceeds the investment shown in the assessee's books of accounts.

2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.6,05,71,018/- made on account of apportionment of suppressed sales/receipts as worked out on the basis of seized material and the statement of the Director of the company recorded u/s 132(4) of the Income Tax Act, 1961 and as worked by the Special Auditors.

3. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.4,64,576/- made u/s 14A of the Income Tax Act, 1961 read with Rule-8D of the Income Tax Rules, 1962.

4. (a) The order of the CIT (A) is erroneous and not tenable in law and on facts."

4. We advert to the first and foremost issue of section 50C/69C addition amounting to Rs.29,35,260/- made by the Assessing Officer in his assessment framed on 11.08.2011 and reversed in the lower appellate findings. The same admittedly represents the difference between the assessee's actual purchase price of the asset herein amounting to Rs.30,00,000/-

as against circle rate thereof to the tune of Rs.59,35,260/- charged by the sub-registrar's office.

5. It is in this factual backdrop that the Revenue reiterates its first and foremost ground that the learned assessing authority had rightly made the impugned addition u/s 69C of the Act. Learned CIT-DR could hardly dispute the clinching fact that there is not even an *iota* of allegation against the assessee to have paid anything over and above the actual purchase price amounting to Rs.30,00,000/- and therefore, we are of the considered view that the impugned addition has been rightly deleted. The Revenue's instant first and foremost substantive ground is rejected therefore.

6. Next comes the second issue of apportionment of suppressed sales/receipts amounting to Rs.6,05,71,018/- made in the course of assessment and deleted in the lower appellate proceedings as follows:

"15. The grounds of appeal No. 8, 9 & 10 relates to addition of Rs. 6,05,71,018/-on account of apportionment of impugned suppressed sales/receipts as determined by the A.O. in the para No. 6-8 of assessment order. Such addition has been made by the A.O. relying upon the seized material and the statement of directors of the company recorded u/s 132(4) of the Act. The appellant has relied upon its detailed written submissions on the issue involved, filed during appellate proceeding of its main company M/s Mahagun India Pvt. Ltd. for the A.Y.

2005-06, appeal No. 75/11-12. I have already adjudicated upon the issue vide my order dated 30.04.2012. Accordingly, the addition of Rs. 6,05,71,018/- on account of proportionate share of alleged suppressed sale/receipts as allocated to the year under review is deleted. The ground therefore is allowed."

7. Learned CIT-DR vehemently argues that the impugned addition deserves to be restored since the same is based on the relevant material seized by the investigation unit during the course of search on 27.08.2008. She further highlights the fact that there is nothing mentioned in the seized documents indicating the assessee to have actually received the relevant amount in question of Rs.6,05,71,018/- as the same represents the apportionment figure in A.Y. 2006-07 going by project completion method. That being the case, we note from a perusal of the case file that the very issue had arisen in the Revenue's yet another appeal ITA No. 2819/Del/2012 involving "Mahagun India Pvt. Ltd." wherein the tribunal's order dated 10.09.2024 has rejected it's corresponding substantive ground as follows:

"42. We have heard the rival submissions and have perused the relevant material on record. For the impugned AYs 2005 and 2006, we are concerned with the limited issue i.e., whether the addition on account of undisclosed income was made on the basis of incriminating materials qua the assessment years involved. The CIT(A) has very elaborately discussed the issue of addition of Rs 49,78,15,413/- as undisclosed income based on suppressed sales/receipts spread over the block period from AY 2004-05 to AY 2009-10. At para

15 of his order, the CIT(A) has described the basis of addition made by the Assessing Officer and the basis of Special Auditor's working of the suppressed sales.

43. We have incorporated the findings of the CIT(A) as above in our order which may be summarized as under:

- 1. The auditor in the course of special audit, has determined the suppressed receipts/sale/extrapolated sales at Rs. 42,98,06,439/- which has been spread over the block years AY 2004-05 to AY 2009-10 in the ratio as determined by the auditor following Percentage of Completion Method of Accounting.*
- 2. The assessing officer has, however, made an addition of Rs 49,78,15,413/- by adding the figures of surrender made at the time of survey u/s 133A i.e Rs 16,95,88,000/- and Rs 32,82,27,143/- being the sum total of credit side of the annexures seized at the time of search. The total amount of Rs 49,78,15,413/- was apportioned, on extrapolation basis, for each of the assessment year in the block period of AY 2004-05 to AY 2009-10.*
- 3. The addition of Rs 16,95,88,000/-, based on receipts as found in the diary impounded during survey u/s 133A dated 20.03.2007, pertains to the period April 2006 till February 2007 relevant to AY 2007-2008.*
- 4. The balance addition Rs 32,82,27,143/- represents sum total of credit side of ledger books marked as Annexure A- 20,21,22 & 24. While considering the entire credit as suppressed sales, the Assessing Officer has not given benefit, of the debit/payments recorded in the Annexure A- 20,21,22 & 24 itself of Rs 14,84,41,838/-.*
- 5. The CIT(A) held that the debit/payment recorded in the Annexure A-20,21,22 & 24 of Rs 14,84,41,838/- must be reduced from the corresponding credit entries of Rs 32,82,27,143/-. The balance of Rs 17,97,85,305/- only is to be treated as undisclosed income of the assessee.*
- 6. The additional undisclosed income as determined above of Rs 17,97,85,305/- will be taxed on the*

receipt basis in the respective year of its receipts as reflected in the seized documents itself as against the offer made by the appellant for search year (A.Y. 2009-10) as per detail as under:

<i>A.Y</i>	<i>Additional income</i>	<i>Cumulative income</i>
<i>2007-08</i>	<i>2,18,19,636.00</i>	<i>2,18,19,636.00</i>
<i>2008-09</i>	<i>9,31,79,939.00</i>	<i>11,49,99,575.00</i>
<i>2009-10</i>	<i>6,47,85,730.00</i>	<i>17,97,85,305.00</i>
<i>TOTAL</i>	<i>17,97,85,305.00</i>	

44. We note that the finding of the CIT(A) is that the AO has extrapolated the 'suppressed sales' found in the diary impounded during survey u/s 133A and the seized documents to arrive at the undisclosed income for the impugned AYs. We also note that the seized materials and documents, relied upon by the Assessing Officer, reflect the undisclosed income which pertains to AYs other than the impugned AYs. We also note that the CIT(A), after perusing the seized materials, came to a finding that the seized documents reflect undisclosed income for AY 2007-08, AY 2008-09 and AY 2009-10. Furthermore, the Id DR was not able to controvert the assertion of the counsel of the assessee that there was no incriminating material found during the search pertaining to the impugned AYs.

45. In the above factual matrix, the uncontroverted fact that emerges for the impugned AY 2005-2006 and AY 2006-07, is that the AO utilized extrapolated figures of suppressed sales to determine the undisclosed income of the assessee which is not legally permissible as held by the jurisdictional Delhi High Court in the case of Meeta Gutgutia(supra) at para 71 that :

"For all of the aforementioned reasons, the Court is of the view that the ITAT was justified in holding that the invocation of Section 153A by the Revenue for the AYs 2000-01 to 2003-04 was without any legal basis as there was no incriminating material qua each of those AYs".

The SLP filed against this judgement before the Hon'ble Supreme Court was also dismissed as reported in PCIT v Meeta Gulgutia (2018) 257 Taxmann 441 (SC). Therefore, for the reasons as enumerated above, we hold

that the addition made by the AO for AY 2005-06 and AY 2006-2007 are not made on the basis of seized material qua the assessment years involved and accordingly we direct the AO to delete the addition on account of suppressed sales for both the AYs."

8. We accordingly conclude that given the fact that the seized material herein does not indicate any actual amount received in the relevant previous year, the Revenue's instant ground seeking to extrapolation thereof by way of apportionment deserves to be rejected as per learned co-ordinate bench foregoing detailed discussion. Ordered accordingly.

9. Lastly comes the Revenue's third substantive ground that we ought to revive section 14A disallowance of Rs.4,64,576/- wherein the assessee has not derived any exempt income. That being the case, we quote Cheminvest Limited vs. CIT (2015) 61 taxmann.com 118 (Delhi) that the impugned disallowance does not apply in absence of any such exempt income. This is indeed coupled with the fact that the legislature has recently amended section 14A by inserting explanation thereto vide Finance Act, 2022 w.e.f. 01.04.2022 that such a disallowance could indeed be made even in absence of exempt income. We reiterate that we are in A.Y. 2006-07 and the foregoing amendment does not carry any retrospective effect as per PCIT Vs. Era Infrastructure India Ltd. (2024) 448 ITR 674 (Del.). We accordingly reject the

Revenue's instant last substantive ground as well. So is the outcome of its main appeal ITA No. 3664/Del/2012 which fails accordingly.

10. Learned counsel representing assessee does not press for its cross objection CO No. 300/Del/2012 once we have rejected the Revenue's main appeal. Ordered accordingly.

11. To sum up, this Revenue's appeal ITA No. 3664/Del/2012 is dismissed and assessee's cross appeal CO No. 300/Del/2012 is dismissed as not pressed in the foregoing terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 27/02/2025.

Sd/-

(S. Rifaur Rahman)
Accountant Member

Dated: 27/02/2025

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR