

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.5051/Del/2012
Assessment Year: 2006-07
With
ITA No.4011/Del/2011
Assessment Year: 2007-08
With
ITA No.4010/Del/2011
Assessment Year: 2008-09

ACIT, Central Circle-22, New Delhi	Vs.	M/s. New World Buildcon Pvt. Ltd., 401, Vipps Centre, 2 Community Complex, Masjid Moth, Greater Kailash-II, New Delhi
PAN: AACCN1600L		
(Appellant)		(Respondent)

With
C.O. No.120/Del/2015
[In ITA No.5051/Del/2012]
Assessment Year: 2006-07
With
C.O. No.218/Del/2012
[In ITA No.4011/Del/2011]
Assessment Year: 2007-08
With
C.O. No.1/Del/2025
[In ITA No.4010/Del/2011]
Assessment Year: 2008-09

M/s. New World Buildcon Pvt. Ltd., 401, Vipps Centre, 2 Community Complex, Masjid Moth, Greater Kailash-II, New Delhi	Vs.	ACIT, Central Circle-22, New Delhi
PAN: AACCN1600L		
(Appellant)		(Respondent)

Assessee by	Sh. Salil Kapoor, Adv. Ms. Ananya Kapoor, Adv. Sh. Tarun Chanana, Adv. Sh. Shivam Yadav, Adv. Sh. Utkarsh Kumar Gupta, Adv. Sh. Sumit Lalchandani, Adv.
Department by	Ms. Baljeet Kaur, CIT(DR)

Date of hearing	29.01.2025
Date of pronouncement	28.02.2025

ORDER

PER SATBEER SINGH GODARA, JM

These Revenue's three appeals and assessee's as many cross objections i.e. ITA No.5051/Del/2012 with C.O. No.120/Del/2015; ITA No. 4011/Del/2011 with C.O. No. 218/Del/2012 and ITA No. 4010/Del/2011 with C.O. No. 01/Del/2025, are directed against CIT(A)-III, Delhi's separate orders; dated 04.07.2012, 02.06.2011 and 01.06.2011 for assessment years 2006-07, 2007-08 and 2008-09 passed in case nos. 358/09-10, 359/2009-10 and 360/2009-10; respectively. Relevant proceedings in the former twin assessment years 2006-07 and 2007-08 are under section 153C read with section 143(3) and under section 143(3) in the last assessment years 2008-09 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), respectively.

2. Heard both the parties at length. Case files perused.

3. It emerges during the course of hearing that the Revenue's instant three appeals as well as assessee's cross objections involve a common backdrop of facts. Learned departmental authorities appear to have carried out a search action on 05.12.2007 in M/s. Kohinoor Foods Ltd. and its group of cases which allegedly led it to seizure of various incriminating documents "belonging" to the assessee. The Revenue thereafter initiated section 153C's proceedings in assessee's case vide satisfaction note dated 04.11.2009 (page 3 in the paper-book) in the former twin assessment years 2006-07 and 2007-08. There is no dispute between the parties that the last assessment year before assessment year 2008-09 in fact involves an assessment framed under section 143(3) of the Act.

4. It is in this factual backdrop that we take up the Revenue's appeal ITA No. 5051/Del/2012 as the "lead" case wherein it seeks to revive on-money addition of Rs.8.99 crores; made in the course of assessment framed on 30.12.2009 and deleted in the lower appellate discussion reading as under:

"7. Finding on Ground of Appeal No. 3 & 4 :-

A. The facts of the case, based on which addition to income of Rs. 8.99 Crores has been made, lie in a narrow compass in as much as the addition to income is based upon the interpretation of the notings

made on the seized document viz. page 67 of Annexure A-6 which is a page of diary maintained by Ms. Kanika Verma, Company Secretary of M/s Kohinoor Foods Ltd. It is a matter of record that land measuring 105 acres and belonging to the appellant was agreed to be sold as per MOU entered between the assessee and one M/s Clarion Properties Ltd at the rate of Rs. 33 lacs per acre, which worked out to a total consideration for Rs. 49.5 Crores. As per the notings on this page of the diary which is dated 22.03.2005 an amount of Rs. 1.01 Crores is written as "paid". This amount has been paid through cheque nos. 517656 and 517657 dated 21.03.05 issued by M/s Clarion Properties Ltd from their account in Standard Chartered Bank and deposited in the appellant's bank account in HDFC Bank. Below the above figure of Rs. 1.01 Crores recorded as "paid" on page 67 of the diary a figure of Rs. 4 Crores against the date 10.04.05 and another figure of Rs. 4.99 Crores against the date 30.04.05 has been recorded and thereafter a total of Rs. 10 Crores has been made against the narration "as on 30.04.05",

The appellant's submission veers around the proposition that only the amount of Rs. 1.01 Crores was actually paid on 22.03.05 and the other notings were schedule of planned payments in respect of the sale of said land. That the contents of this page clearly demonstrate that on payment of 20% the partial registry of 20% land in favour of M/s CPL has to be done and adjustment was proposed to be made out of Rs. 10 Crores which would have been paid by 30.04.05. It has been submitted by the appellant that as the payments had not been received as per the above stated proposed plan for schedule of payments therefore neither the MOU was signed nor 20% of land was registered in favour of CPL. It has also been submitted that besides the above cheque payment of Rs. 1.01 Crores a payment of Rs. 51 lacs was made by M/s CPL on 23.03.05 and another amount of Rs. 1 Crore each in two cheques dated 06.04.05. Thus total amount received in cheque by the assessee including the amount of Rs. 1.01 Crores recorded on page 67 was for Rs. 3.52 Crores which was subsequently returned back to M/s Clarion Properties Ltd. through three different cheques by 10.05.06. That this has been duly reflected in the respective balance sheets. The appellant has also reiterated his earlier, contention in his latest submission dated 23.04.2012 that the hand written note on page 67 of the diary was prepared on Tuesday the 22nd March, 2005 which is supported by the fact that the same contains the date 22.03.05 printed on it. That the other notings on this page are all projections and were not received by the appellant except an amount of Rs. 1.01 Crores. Reference has also been made to details of other payments received in cheque for Rs. 52 lacs on 23.03.05 and Rs. 2 Crores on 06.04.05. The AO has also referred to the fact that that these recordings have been made by Ms. Kanika Verma who's Statement on oath was recorded during the search. That

the copy of the statement of Ms. Kanika was never supplied to the appellant for cross examination and that Ms. Kanika Verma is no way connected with the business affairs of the appellant and therefore her cooperation or lack of it in the search proceedings could not be used against the appellant to come to the conclusion that a cash amount in two installments of Rs. 4 crores and Rs. 4.9 Crores was also received by the assessee on 10.04.05 and 30.04.05 respectively.

B. The undisputed facts which thus emerge from the findings of the AO are as follows:-

i. That the diary marked as Annexure A-6 is maintained by Ms. Kanika Verma the Company Secretary of M/s Kohinoor Foods Ltd.

ii. It is also a matter of fact as seen from the Statement on oath of Ms. Kanika Verma dated 18.12.07 that while admitting the fact that this diary is an official diary Ms. Verma has not explained the contents on page 67 thereof.

iii. It is again a matter of fact that M/s Clarion Properties Ltd to whom summons were issued u/s 131 has vide his reply filed on record only given details relating to the payment of Rs. 3.52 Crores made to the appellant and the subsequent receipt of Rs. 3.50 Crores uptill 31.03.06.

iv. Lastly, it is also a matter of fact that apart from the above transaction in cheque for Rs. 3.52 Crores no other transaction in cheque was carried out and there is no finding of fact by the AO that 20% of land was registered in favour of CPL upon 20% of payment by 30th April, 2005.

// In view of the above undisputed facts the deciphering of the recordings / notings made on page 67 has therefore to be done based on the facts which have unfolded in this case and it's reasonable interpretation. One fact which stands out is that there is no evidence on record or otherwise marshalled by the A.O. to controvert the assertion of the assessee that the MOU for registration of 20% land was not carried out in this case. Taking the fact of no registry of 20% of the land in favour of M/s CPL as per the terms of the MOU as true and correct it stands to reason that Rs. 10 Crores which is the 20% of consideration of 20% of land (including the cheque and the cash portion taken together) would possibly not have been paid by 30.04.2005, resulting in subsequent cancellation of the deal. To put it differently had the 20% payment of Rs. 10 Crores been made by 30th April, then in normal and ordinary course of business 20% land would also have been registered in favour of the proposed buyer and the MOU signed. Further even the AO in his order for upholding the

addition to income has merely observed that the amount of Rs. 8.99 appears to have been forfeited by the assessee on cancellation of the deal which is a normal practice in property deals and that no hard or corroborative evidence has been brought on record.

Thus the entire addition to income for Rs. 8.99 Crores is essentially based on two set of assumptions one being that the cash installments of Rs. 4 Crores and Rs. 4.9 Crores mentioned on page 67 were actually received by the assessee on 10.04.05 and 30.04.05 and the other assumption that even while the deal has been cancelled the amount of Rs. 8.99 Crores appears to have been forfeited by the assessee. On a balance of scale it has to be decided on reasonable probability that whether the said document unequivocally or unmistakably leads to the conclusion that the amounts on 10.04.05 for Rs. 4 Crores and 30.04.05 for Rs. 4.99 Crores were in fact paid to the appellant. The AO has merely relied upon the notings on page 67 the contents of which are not clear and from which no definite evidence as to receipt of unaccounted consideration is absolutely evident. Moreover this document has been maintained by Ms. Kanika Arora / Verma who has not given any categorical answer to the contents of the said document and neither she has been cross-examined on this issue by the assessee. In view of the cumulative totality of the facts the addition made to income which has not been corroborated by any other material either found during the course of search or collected subsequent to the search cannot be sustained as the same is based on presumption and assumption. Additionally, the fact the proposed deal fell apart and was not gone through even in parts for which 20% payment was made, as per the notings on the document, goes on to support the appellant's contention that the notings were referring to proposed transactions which did not materialize and therefore the MOU was not gone through. Accordingly, the addition made for Rs. 8.99 Crores is directed to be deleted and the ground of appeal is allowed.

In a result the appeal is allowed.”

5. Learned CIT-DR vehemently reiterates the Revenue's pleadings based on the assessment findings that the Assessing Officer had rightly added the on-money sum of Rs.8.99 crores going by the contents of the seized material (annexure-6, page 67)

compiled at page 4 in the paper-book. We make it clear that the said seized document(s) forms part of the case records before us.

6. Learned CIT(DR) although strongly submits that the said seized document in facts belongs to the assessee going by the contents of the satisfaction note, we are of the considered view that neither the assessee's name is mentioned therein nor the same could be held as satisfying the corresponding criteria of "belongs" to the taxpayer so as to trigger section 153C proceedings resulting in the impugned addition.

7. Faced with this situation, learned CIT(DR)'s case is that contents of such seized material carry presumption of correctness under section 292C of the Act. We are of the considered view that the above statutory presumption is applicable only against the person from whom such documents are found/seized during the course of search than any other assessee in whose case there has to be a due corroboration by the departmental authorities before any addition is made based qua contents thereof. This is indeed coupled with the fact that the learned CIT(A) detailed discussion herein has concluded that no such deal could sail through so as to result in any addition in the assessee's hands.

8. We are of the considered view, be it on the issue of validity of the impugned assessment or on merits that the Revenue's instant sole substantive ground has to be declined only as the above seized document which is neither signed by the assessee nor its name is mentioned therein, could be held as "belonging" to it nor contents lead to any inference of actual on-money payment forming subject matter of addition in the assessee's hands. We thus reject the Revenue's instant sole substantive ground as well as the "lead" appeal ITA No. 5051/Del/2012 in very terms.

9. The outcome would be hardly any different in Revenue's second appeal ITA No. 4011/Del/2011 for assessment year 2007-08, wherein it endeavours to revive the Assessing Officer's action making the alleged unaccounted cash payment addition of Rs.20,97,40,000/- in the assessee's hands. Learned CIT(DR) is indeed very fair in taking us to the assessment findings dated 30.12.2009 at pages 2 and 3 wherein same rough jottings and alleged map was seized from the searched person (page 9, Annexure- A-1), which is indeed in the nature of dumb document only in light of Commissioner of Income Tax v. Girish Chaudhary, 2008) 296 ITR 619 (Del). We wish to reiterate here that the above

seized document merely indicates some rates than pinpointing any specific on-money payment or receipt; as the case may be, involving the assessee.

10. Faced with this situation, we are of the considered view that the learned CIT(A) has rightly accepted the assessee's contentions directed against the impugned addition of Rs.20.97 crores made in its hands. This Revenue's instant second appeal ITA No.4011/Del/2011 also fails therefore.

11. Coming to the last assessment years 2008-09, the Revenue could hardly dispute the clinching fact that the learned Assessing Officer had recorded his section 153C satisfaction against the assessee on 04.11.2009 (page 3 in the paper-book). That being the clinching case, we quote section 153C(1) 1st proviso that the addition of search in such an instance is to be "construed as reference to the date of receiving the books of account or documents..... by the Assessing Officer having jurisdiction over such other person", and hold that once the assessee's assessment for the impugned assessment year 2008-09 was pending in light of its return filed on 02.12.2008; the departmental authorities could not have assessed it under the normal provisions under section

143(3) of the Act going by PCIT Vs. Ojjus Medicare (P) Ltd., (2024) 465 ITR 101 (Del) and CIT Vs. Jasjit Singh (2024) 465 ITR 101 (SC). We are accordingly of the view that the Revenue's instant last appeal ITA No. 4010/Del/2011 also deserves to be rejected for this precise reason as the assessment couldn't have been framed u/s 143(3) of the Act.

12. The factual position would be hardly any different on merits as well in the instant appeal so as to decide sole substantive ground seeking to revive the assessment disallowing the assessee's bad debts under section 36 or business loss under section 28 of the Act amounting to Rs.2,48,84,000/-, is concerned. This is for the precise reason that the learned CIT(A) has made it clear in his lower appellate discussion that the assessee had indeed made advances in the real estate and land purchases business which stood written off as the corresponding transactions could not be materialized. He accordingly concludes that the said claim indeed amounts to the assessee's loss in the ordinary course of its business. Learned CIT(DR) is indeed very fair in not disputing the assessee's claim on merits regarding bad debts forming subject matter of addition before us. We thus reject Revenue's instant sole substantive

ground herein on merits as well. So is the outcome of its last appeal ITA No. 4010/Del/2011.

12. The assessee's corresponding cross objections C.O. Nos. 120/Del/2015; 218/Del/2012 and 1/Del/2025 raising various legal as well as factual issues stand rendered academic in very terms. Ordered accordingly.

13. To sum up, these Revenue's three appeals ITA Nos.5051/Del/2012, 4011/Del/2011 and 4010/Del/2011 are dismissed and assessee's cross objections C.O. No.120/Del/2015; C.O. No. 218/Del/2012 and C.O. No. 01/Del/2025 are dismissed as rendered academic/infructuous in the foregoing terms. A copy of this common order be placed in respective case files.

Order pronounced in the open court on 28th February, 2025

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 28th February, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi