

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.460/Nag./2024**  
(Assessment Year : 2021-22)

Oshian Realtors India Pvt. Ltd.  
40, Preeti Apartments  
Surendra Nagar, Nagpur 440 015  
PAN – AABCO7935L

..... Appellant

v/s

Income Tax Officer  
Ward-1(4), Nagpur

..... Respondent

Assessee by : Shri Subodh Kanetkar and  
Shri Ameya S. Kanetkar  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 10/02/2025

Date of Order – 21/03/2025

**ORDER**

**PER K.M. ROY, A.M.**

Instant appeal by the assessee is against the impugned order dated 24/05/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2021-22.

2. In its appeal, the assessee has raised following grounds:-

*"1. THAT having regard to the facts and circumstances of the case, Hon' Commissioner of Income Tax (Appeal), has passed the order after a period of one year from the end of relevant financial year making it time-barred, without a proper DIN number, which was subsequently communicated and changed with a different date of passing the order.*

*2. THAT having regard to the facts and circumstances of the case, Hon' CIT(A) has erred in law and on facts by upholding the addition of income of Rs.*

43,78,000, without considering sec 2(47) of Income Tax Act, 1961, even when it was recognized as revenue in earlier year, resulting in double taxation.

3. THAT having regard to the facts and circumstances of the case, Hon' CIT(A) has completely and unjustifiably sidelined the issue of double addition of income tax of Rs. 13,66, 111 while computation of total income as per sec 143(1) and discussed irrelevant matters instead.

4. THAT having regard to the facts and circumstances of the case, Hon' CIT(A) has upheld the disallowance of Rs. 7,76,408 claiming that the assessee has provided no evidence, when substantial and sufficient evidence was provided.

5. THAT Hon' CIT(A) has ignored decision on the justifiability of proceedings u/s 271AAC/271D citing that proceedings have not yet been initiated and decided, and that proceedings under sec 270A have been initiated based on observations, without discussing in details as to whether those observations are justified/correct.

6. THAT Hon' CIT(A) has completely misunderstood the arguments put forward by the assessee and discussed and adjudicated on issues the assessee did not even raise, often attributing statements cooked up by Hon' CIT(A) to the assessee.

7. THAT Hon' CIT(A) has adjudicated on the matter without giving reasonable and proper opportunity of being heard to the assessee and without providing solution to the practical issues faced by the assessee while filing of appeal and during scrutiny assessment.

8. THAT Hon' CIT(A), just like Ld. AO, has not gone through the evidence submitted by the assessee carefully and made multiple mistakes while drafting the order, often referencing paragraphs that don't even exist in the order.

9. THAT Hon' CIT(A) and Ld. AO, have been grossly negligent and while dealing with the case, often ignoring evidence and misconstruing and/or twisting statements of the assessee.

10. THAT emails relating to communication of notices and orders are being sent to erstwhile directors of the company, who have turned competitors, resulting in serious information leakage and endangering assessee's competitive position, when their names appear nowhere in the updated information on the income tax portal, which was updated months before these communications were sent.

11. THAT the appellant craves, leave to add, alter, amend or vary and/or withdraw any or all of the aforesaid grounds of Appeal or at time of hearing of the above appeal."

3. The learned Authorised Representative for the assessee did not wish to press ground no.1. Hence, ground no.1, is dismissed as not pressed.

4. In ground no.2, the learned CIT(A) has summarised the issue as under:-

*"8.2 I have I have perused the assessment order, grounds of appeal and submission filed by the appellant carefully. I find from the assessment order that the appellant had reported total sale of Rs. 14,46,40,673 during the year, in the list submitted on 01.11.2022 before AO, showing particulars of immovable properties sold during the year under consideration. However, in P&L account, appellant reported sales of Rs. 14,02,62,673/- only. Appellant had claimed that the difference of Rs. 43,78,000 is on account of sale of plot nos 32 and 33 to Sharmila Bhoyar, on 18.10.2019, which falls in FY 2019-20, relevant to AY 2020-21. However the said sale was reported in Form 26AS of the appellant of AY 2021-22, which indicated that the payment was made in relevant FY 2020-21 and TDS was also deducted thereon, in the same year. As appellant failed to submit copies of sale deeds and also failed to prove that the amount is received by it in the earlier financial year i.e. 2019-20, and failed to show that the same has already been disclosed in the income of AY 2020-21, the AO treated the same as receipts of AY 2021-22 on the basis of Form 26AS of AY 2021-22.*

*During appellate proceedings the appellant submitted that due to big size of file, the copies of the relevant agreements could not be uploaded before the AO. The appellant submitted that generally the revenue is recognized when the title of the property and all rights and liabilities in the property are passed over to the customer. Further the appellant contended that the agreement to sell related to the property under verification sold to Sharmila Bhoyar was executed on 11/08/2019 and entire sale consideration was received in FY 2019-20 itself, therefore the revenue was recognized in AY 2020-21. The appellant contended that the sale deed was reported in 26AS of the FY 2020-21, hence the discrepancy arisen.*

*I have considered the facts of the case and submission filed by the appellant. I find that the final sale deed is executed in FY 2020-21 and that is why the transaction is reflected in 26AS statement of FY 2020-21. The appellant itself admitted that the revenue is recognized only after the title and rights and liabilities are passed on to the customer. Whereas in the case of transaction under verification, the appellant claimed to have adopted different method for recognizing the revenue but for such deviation, the appellant has not advanced any valid justification. Moreover the appellant has failed to show that the receipts of 43,78,000/- have actually been offered to tax in AY 2020-21 with supporting evidences. Therefore the argument put forth by the appellant is not found to be acceptable. In view of the above discussion, the addition made by the A.O. is confirmed and ground of appeal raised by the appellant is dismissed."*

5. In this case, on receipt of full payment upon execution, the entire risk and reward of ownership was transferred. The assessee had demonstrated

that the amount received as pre-agreement was booked as revenue in earlier financial year relevant to the assessment year 2020-21 by producing ledger, statement of sales project wise before the A.O. But the Assessing Officer failed to apply his mind and got swayed by the fact of execution of registered deed in current financial year. The method of accounting does not depend on such circumstances but is governed by principles laid down by the Accounting Standards. The assessee has duly recorded the transaction as turnover in its books and offered the same for taxation. Any further addition will lead to double taxation. Hence, the impugned order passed is hereby reversed by allowing ground no.2, raised by the assessee.

6. Insofar as ground no.3 is concerned, from the computation of income, it is clear that profit as per Profit & Loss Account is ₹ 47,59,190, is the starting point. The same tallies with profit before tax as per statement of Profit & Loss Account. Current tax of ₹ 13,66,111, has not been considered as deduction. So, there is no question of disallowing the same. The authorities below have failed to appreciate the issue in correct perspective. Accordingly, ground no.3, is allowed by deleting the addition of ₹ 13,66,111.

7. In ground no.4, the learned CIT(A) has discussed the appeal in Para-7.2, which is reproduced below:-

*"7.2 I have perused the assessment order, grounds of appeal and submission filed by the appellant carefully. I find from the assessment order that the appellant had claimed commission payment expenses to 7 parties of Rs.7,76,408/-. The AO had issued notice u/s 133(6) to the said parties to verify the genuineness of the above expenses. However there was no response to the notices issued by the AO. Therefore the AO had carried out the verification through verification unit of the department also but there was no positive result. The appellant also failed to submit supporting justification*

*for commission payments and evidences called for by the AO. Therefore the AO made addition of Rs.7,76,408/- as unexplained expenditure.*

*During the course of appellate proceedings, the appellant submitted that the AO has no authority to call the confidential information of third party from the appellant and also AO has conducted inquiry with the third parties without authority of the appellant. It is further claimed that payments made to some of the parties is not commission but payment to contractors and such amounts were paid after deducting TDS.*

*I have considered the facts of the case and submission filed by the appellant. I find that the explanation submitted by the appellant is ignoring the provisions of income tax Act and Income tax Rules. Since the commission payment expenditure was claimed by the appellant as business expenditure in the return of income, the appellant is bound to prove the genuineness of the said expenses. Since the appellant had failed to discharge its primary onus, the AO is very much entitled to make inquiry to verify the genuineness of the said expenditure. Therefore the arguments made by the appellant are not found acceptable. Further the appellant has not produced confirmation letters and other supporting evidences to prove the genuineness of the commission payments. The claim of the appellant that some payments were made against contract payments, is also not supported by any evidence. Further I find that just because TDS was made from a particular payment, the transaction does not become genuine unless the genuineness of the transaction is proved with supporting evidences. Further the appellant has not demonstrated that the said expenses were incurred wholly and exclusively for business purpose. Further the receipt of service for which commission payment was made is also not proved by the appellant. In view of the above facts, the addition made by the AO is confirmed and the ground of appeal raised by the appellant is dismissed.”*

8. The Assessing Officer has added the same under section 69C of the Act. The assessee has already claimed commission of ₹ 2.6 crore in its books of account. Hence, a miniscule portion cannot be considered as unexplained particularly when the same is claimed as an expense in its Profit & Loss Account. Moreover, when the expenditure is reflected in the regular books of account. Thus, ground no.4, is allowed.
9. The remaining grounds of appeal do not call for any adjudication, hence not adjudicated.

10. In the result, appeal stands partly allowed.

Order pronounced in the open Court on 21/03/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 21/03/2025**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur