

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं. / ITA No.230/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

M/s Basera Builders Godhulipuram Vrindavan, Mathura 281121	बनाम/ Vs.	ACIT 1(1)(1) Agra
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAFFB-5568-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri M.M.Agrawal (CA) – Ld. AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Shailender Shrivastava – Ld. SR. DR

सुनवाईकीतारीख/Date of Hearing	:	21-02-2025
घोषणाकीतारीख /Date of Pronouncement	:	28-03-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of an order of Learned Commissioner of Income Tax (Appeals), NFAC [CIT(A)] dated 27-05-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 22-04-2021. Having heard vehement arguments of both the sides and upon perusal of case records, the appeal is disposed-off as under. During the year, the assessee-firm carried out construction activities.

Proceedings before lower authorities

2.1 The assessee claimed commission expenses of Rs.80.02 Lacs on turnover of Rs.315.96 Lacs. The Ld. AO alleged that rate of commission was very high. The commission paid in earlier years was in the range of 1 to 2% whereas commission paid in this year was more than 25% of

sales. The assessee justified that same on the ground that it carried out one project at Vrindavan during FY 2009-10. Some of the flats, owing to its locations, could not be sold even after 9 years and therefore, the same were ultimately sold by paying hefty commission. Similar was the situation with other two projects which were started during FY 2011-12. The assessee stated that it was actually an effort to clear the unsold inventory. The assessee tabulated commission paid for each of the flats along with details of TDS deducted, mode of payment, rate of commission for each of the payees. All the payees had PAN Numbers.

2.2 The Ld. AO held that the assessee paid commission in the range of 6% to 41% which was very high in real estate business. The assessee reiterated that high commission was paid only on those flats which were difficult to be sold due to locational disadvantage. The quantum of commission was based on the prevailing situation of the business. When most of the projects were suffering badly due to slump in real estate business after demonetization, it was a wise decision to liquidate the inventory even after paying more commission than to hold the same and incurred more expenses on maintenance. The Ld. AO put the payees to notice and the brokers were asked to submit copy of bank statements, ledger extracts and Income Tax returns copies. In replies, 12 out of 19 agents replied and submitted the details and in fact, confirmed the commission payments. However, Ld. AO held that the agents did not have any past record in selling flats and had no experience in real estate business. Finally, entire commission of Rs.80.02 Lacs was disallowed and added back to the income of the assessee. The Ld. CIT(A) held that there was no justification for the assessee as to why it had selected only

17 inexperienced persons and why each helped in selling one / two projects. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

3. From the facts, it emerges that the assessee is engaged in construction activities. To sell inventory in the projects, the assessee requires the assistance of commission agents / brokers who would facilitate sales on behalf of the assessee against commission. The assessee has carried out certain projects in earlier years and the assessee was having old inventories in the said projects. To incentivize sales, the assessee has paid higher commission in this year. The detail of each of the payees along with their PAN was furnished by the assessee. The payment was through banking channels after deduction of tax at source. Most of the payees, upon being enquired, confirmed the receipt of commission from the assessee. It could thus be concluded that the assessee had discharged the onus of proving these payments and such payments meet the requirement of Sec. 37(1). The only allegation of lower authorities is that rate of commission was very high. However, the same overlook the factual matrix in which the commission has been paid. The assessee has paid high commission to liquidate old inventories and the same would save maintenance cost for the assessee. This fact remains uncontroverted before us. The revenue, in our opinion, could not question the prudence of a businessman as to conduct of its business. There is nothing before lower authorities to establish that any of the payment was not genuine. No adverse inference could be drawn against the assessee for non response from few of the payees particularly when the assessee had furnished PAN details of all the payees. The impugned addition, in our considered opinion, is more on presumption rather than

on facts. Our view is duly supported by the decision of Hon'ble Bombay High Court in the case of **The Indian Hume Pipe Co. Ltd. vs. CIT (ITA No.744 of 2002 dated 31-08-2023)** holding that the revenue cannot sit in judgment over the assessee to come to a conclusion as to how much payment should be made for the services rendered particularly when there is no allegation of flow back of commission payments. Considering all these facts, we would hold that lump sum disallowance of Rs.5 Lacs would meet the end of justice so as to plug any possible leakage of revenue. The remaining addition stands deleted.

4. The appeal stands partly allowed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA