

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. 320/Agr/2018
(निर्धारणवर्ष / Assessment Year:2013-14)

M/s R.R.D. Developers Kedarpur, In front of Tata Showroom, Shivpuri Link Road, Gwalior.	बनाम/ Vs.	Pr. CIT Gwalior.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAMFR-5438-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	None
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Sukesh Kumar Jain – Ld. CIT/DR

सुनवाईकीतारीख/ Date of Hearing	:	21-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	23-04-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax, Gwalior (Pr.CIT) for Assessment Year (AY) 2013-14 in the matter of an assessment framed by Ld. AO u/s 143(3) of the Act on 17-03-2016. At the time of hearing, none appeared for assessee. Accordingly, the appeal was proceeded with the able assistance of Ld. CIT-DR who supported the revision of the order.

2. Upon perusal of assessment order, it could be seen that the assessee’s return of income was scrutinized and during the course of assessment proceedings, notices u/s 142(1) were issued from time to time which were duly been responded to by the assessee. Accepting

the same, Ld. AO accepted the returned income of the assessee. The assessee acted as a land developer.

3. Subsequently, Ld. Pr. CIT, upon perusal of case records, observed that the assessee reflected deposits from customers for Rs.25.34 Crores on liabilities side of the Balance Sheet. The same were stated to be received against booking of flats. However, the Ld. AO did not verify the deposits by invoking the provisions of Sec.133(6) or Sec.131. The assessee claimed huge development expenses and material expenses but Ld. AO did not examine the same. Accordingly, the assessee was show-caused. The assessee refuted all these allegations and stated that the details of depositors were duly submitted by the assessee. The amount was received from customers and the same were not sundry creditors. The provisions of Sec.68 would not apply in such a case. On the issue of expenses, it was submitted that all the expenditure was capitalized in the books of accounts and therefore, there was no question of claiming any expenditure. However, Ld. Pr. CIT rejected the same and directed Ld. AO to verify above issues and reframe the assessment. Aggrieved, the assessee is in further appeal before us.

4. It could be observed that the assessee's case was subjected to scrutiny. During the course of assessment proceedings, various queries were raised by Ld. AO calling for various documents and explanations which were duly been furnished by the assessee. Having satisfied with assessee's claim, Ld. AO accepted the returned income. The assessee would not have control over the manner in

which the assessment order has been drafted by Ld. AO. After due consideration of assessee's replies and documents on record, Ld. AO accepted the claim of the assessee. It could very well be said that the flagged issues were well documented by the assessee and the same were duly been enquired into by Ld. AO during the course of assessment proceedings itself. After due consideration of assessee's submissions, Ld. AO accepted the claim of the assessee with due application of mind. In our opinion, the allegations in the proposed revision are not well founded. The impugned order seeks to make fishing and roving enquiries only. No concrete finding has been rendered as to how the assessment was erroneous and prejudicial to the interest of the revenue which runs contrary to the decision of Hon'ble Delhi High Court in the case of **ITO vs. DG Housing Projects Ltd. (20 Taxmann.com 587)**. In the present case, there is no finding on merits as to how the order was erroneous and prejudicial to the interest of the revenue. The mere advances as received by the assessee from its customers would not trigger the provisions of Sec.68. On the issue of expenditure, it was stated by the assessee that no expenditure was claimed by the assessee. Both these arguments have not been met on merits in the impugned order. This being so, the impugned revision of the order could not be sustained in law.

5. The Hon'ble Supreme Court in **Malabar Industrial Co. Ltd. vs. CIT (supra)** has held that the phrase 'prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order

passed by the Assessing Officer. Every loss of revenue as consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law. The said principal has been reiterated by Hon'ble Court in its subsequent judgment titled as **CIT V/s Max India Ltd. (295 ITR 282)**. Similar principal has been followed in **Grasim Industries Ltd. V/s CIT (321 ITR 92)**. The ratio of all these decisions is that where two views are possible and AO has preferred one view against another view, order could not be said to be erroneous or prejudicial to the interest of the revenue.

6. Therefore, on the given facts, the impugned revision of assessment order could not be sustained in law. We order so. The assessment as framed by Ld. AO stand restored back.

7. The appeal stand allowed in terms of our above order.

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)
लेखासदस्य / ACCOUNTANT MEMBER

Dated: 23-04-2025

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA