

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.2130/Del/2016

[Assessment Year : 2008-09]

M/s. Focus Heights Pvt. Ltd., (Formerly known as Mirage Homes Pvt. Ltd.), B-209, L/Ground Floor, Chattarpur Extension, Delhi-110074. PAN-AADCM1678C	vs	ACIT, Central Circle-17 (Old)/15(New), Jhandewalan, New Delhi
APPELLANT		RESPONDENT

ITA No.4768/Del/2016

[Assessment Year : 2008-09]

ITO, Ward-9(3), New Delhi	vs	M/s. Focus Heights Pvt.Ltd., B-10, Shivalik, Malviya Nagar, New Delhi PAN-AADCM1678C
APPELLANT		RESPONDENT
Appellant by	Shri Vikas Jain, Adv. & Ms. Shrawani, Adv.	
Respondent by	Shri Surender Pal, CIT DR	
Date of Hearing	20.03.2025	
Date of Pronouncement	29.04.2025	

ORDER

PER MANISH AGARWAL, AM :

These are cross appeals filed by the assessee and by the Revenue against the First Appellate order dated 02.03.2016 of Ld. Commissioner of Income Tax (A)-XXVI, New Delhi [“Ld.CIT(A)”] in Appeal No.216/10-11 passed u/s 250(6) of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 31.12.2010 passed u/s 153A/143(3) of the Act pertaining to Assessment Year 2008-09.

2. Brief facts of the case are that the assessee is a Pvt. Ltd. company engaged in the construction business. A search and seizure action was carried out at the business premises of the assessee on 20.10.2008. The proceedings under section 153A for the year under appeal were initiated by issuance of notice on 29.03.2010. In response to which the assessee had filed the return of income on 29.04.2010, declaring income at INR 29,630/-. The assessment was completed under section 153A/143(3) of the Act on a total income of INR 14,41,21,790/- by making various additions/disallowances.

3. In first appeal, the Ld. CIT(A) has allowed part relief to the assessee. Against the said order of ld. CIT(A), the assessee as well as the Revenue is in appeal before us. The assessee has challenged the appellate order on the following grounds of appeal:-

1. *“That on the facts and circumstances of the case and the provisions of law, the Ld CIT Appeals has failed to appreciate that the notice issued u/s 153A and assessment order passed by the Ld AO u/s 153A/ 143(3) is illegal, bad in law, without jurisdiction. The additions made/sustained are unjust, unlawful and arbitrary and are made against the principles of natural justice.*
2. *That on the facts and circumstances of the case and the provision of law, the Ld CIT Appeals has failed to appreciate that the Ld AO was not justified to ignore the submissions of the appellant that assessment u/s 153A of the Income Tax Act be restricted to assessment in respect of seized documents of incriminating nature and in absence of any seized document of incriminating nature in the case of appellant for the year under consideration, the assessment framed u/s 153A of the Income Tax Act is bad in law and deserve to be quashed.*
3. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT Appeals has failed to appreciate that the assessment had already been completed and had not abated and there being no incriminating material found during the search, the additions made and sustained are bad in law and without jurisdiction.*
4. *That on the facts and circumstances of the case and the provision of law, the Ld CIT Appeals has failed to appreciate that the notice issued u/s 143(2) is time barred, illegal, without jurisdiction and*

hence bad in law, hence the assessment order passed thereof, is also illegal, bad in law and without jurisdiction.

5. a) *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT Appeals has erred in sustaining the addition of Rs.25,90,321/- u/s 69C as alleged excess expenditure in the project at A-8, Westend, New Delhi. The evidences filed and available on records have been wrongly and illegally ignored and rejected.*
 - b) *That on the facts and on the circumstances of the case and the provisions of law, both Ld. AO and Ld. CIT Appeals have erred in not verifying the genuineness of the alleged dumb document namely page no.10 of Annexure A-4 seized by party 0-3.*
 6. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT Appeals has erred in sustaining the addition of Rs.2,67,916/- in respect of depreciation of Gym Equipments which were installed in the office and used for business purposes. The evidences filed and available on records have been wrongly and illegally ignored and rejected.*
 7. *That the Ld.CIT Appeals has erred in ignoring the explanations given, evidences and materials placed and available on record. The same have not been properly considered and judicially interpreted and the same do not justify the additions sustained. The additions have been sustained with preset mind of the Ld. CIT (A) and his order is based on surmises, conjectures and suspicion.*
 8. *That the Appellant craves the right to amend, append, delete any or all grounds of appeal.”*
4. The Revenue has challenged the appellate order on following grounds of appeal:-

- 1(i) *“That the Ld. CIT(A) has erred in laws and facts in deleting the addition of Rs.5,50,00,000/-made by A.O. on account of unaccounted portion of the sale consideration received by the assessee on sale of property A-8, westend, New Delhi on the basis of agreement to sell of the said property found and seized and thus the assessee understated the sale consideration with respect to the said property.*
- (ii) *That the Ld. CIT(A) has erred in laws and facts in deleting the addition of Rs.56,00,000/-towards rent paid for property at A-48/10, Vasant Vihar, New Delhi as the premises was never taken on rent for business purpose as per reply by the assessee before the A.O.*
- (iii) *That the Ld. CIT(A) has erred in laws and facts in deleting the addition of Rs.6,33,926/-on account of foreign travel by directors along with their family members being not for business purposes and was a pleasure trip.*

- (iv) *That the Ld. CIT(A) has erred in laws and facts in deleting the addition of Rs.5,00,00,000/- being deemed profit received over and above the declared sale consideration of Rs.4.50 Crores by the assessee in respect of sale value of property at A-9/10, Vasant Vihar, New Delhi.*
- (v) *That the Ld. CIT(A) has erred in laws and facts in deleting the addition of Rs.3,00,00,000/-received from Sh. R.C.Puri being unexplained cash credit u/s 68 of the Act.*
- 2(a) *The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on facts.*
- 2(b) *The appellant craves leave, to add/alter or amend any / all of grounds of appeal before or during the course of hearing of appeal.”*

5. We first take assessee's appeal in **ITA No. 2130/Del/2016 [Assessment Year 2008-09]**.

6. Grounds of appeal Nos. 1 to 4 are not pressed by the assessee hence, dismissed.

7. Ground No.5(a) & 5(b) raised by the assessee are in relation to the confirmation of addition of INR 25,90,321/- made under section 69C of the Act as undisclosed expenditure incurred in its ongoing project at A-8, Westend, New Delhi.

8. Brief facts leading to this issue are that during the course of search one loose paper titled as 'Annexure A' page 10 was found/seized from the possession of the assessee containing the details of cost incurred on various projects carried out by the assessee company. In the said paper, the total cost of project at A-8, Westend, New Delhi was noted at INR 6,46,49,715/- as against the cost of INR 6,20,59,394/- recorded in the books of accounts. It was the claim of the assessee that this paper is dumb document and deserves to be ignored. However, the AO by observing that this paper contained the actual amount of cost of construction incurred by the assessee, had made the

addition of INR 25,90,321/- by holding the same as additional amount of expenses spent by the assessee which was not recorded in the books of accounts and treating it as unexplained expenditure u/s 69C of the Act.

9. Before us, the Ld.AR for the assessee submitted that the assessee constructed a residential building in terms of collaboration agreement dated 09.10.2006 according to which assessee construct certain floor as individual residential units and get first floor and remaining floor will be taken by the landowner. The construction work was commenced in preceding years and the assessee has sold its share in the said property for a sum of INR 6,80,00,000/- in the subsequent year and the income/loss was duly declared in the subsequent year. Ld. AR submitted that in the said paper, opening cost of work in progress of the project at Westend, New Delhi was noted at INR 2,43,62,710/- which is duly matching with the cost recorded in the books of accounts maintained in the regular course. The cost incurred during the year under various heads was also duly recorded in the books of account and the necessary copy of ledger accounts and other details were submitted before the AO as well as before the Ld.CIT(A). He further submits that except the document No.A-4 page-10, no other corroborative evidence was found as a result of search which could lead to believe that the assessee has incurred construction cost of more than the cost recorded in the books of accounts. He drew our attention to Paper Book page 218 to 221 which are year-wise details of work in progress of various projects including A-8 Westend, New Delhi and argued that in the subsequent year i.e. 2009-10, loss of INR 84,15,403/- was declared in the return of income filed and duly accepted by the Revenue,

therefore, it could not be held that the assessee has incurred any unaccounted expenses in the construction of the said building. He further submits that this A-4 at page 10 is a dumb document and deserves no credits for making any addition in this regard. He also placed reliance on the following judgements:-

- CIT Vs. S.M. Aggarwal (2007) 211 CTR 180 (Delhi)
- CIT Vs. D.K. Gupta (2009) 308 ITR 230 (Delhi)
- CIT Vs. Girish Chaudhary (2008) 296 ITR 619 (Delhi)
- CIT Vs. Sharad Chaudhary in ITA No. 933/Del/2012
- CIT Vs. Anil Bhalla (2010) 322 ITR 191 (Delhi)

Ld. AR thus prayed that the addition made on the basis of dumb document may please be deleted.

10. On the other hand, the Ld.CIT DR for the Revenue supported the order of the lower authorities and submitted that document No. A-4 page 10 was found / seized during the course of search in the case of assessee which contains details of cost of construction and other expenses incurred on various projects undertaken by assessee including the cost incurred during FY 2007-08 relevant to Assessment Year under appeal. The Ld. CIT DR further submits that except the figures of expenses pertaining to the year under appeal, all other figures are matching with the cost recorded in books of accounts. Therefore, it cannot be said that this document contained rough notings and is a dumb document. He, therefore, prayed for the confirmation of the addition made and uphold by the lower authorities.

11. We have heard the rival submissions and perused the material available on record. In the instant case, it is an admitted fact that Document A-4 page 10 was found and seized from the possession of the assessee company and the

projects mentioned therein are also related to the assessee company. It is also a matter of facts that majority of the figures stated therein are matching with the cost of respective projects recorded in the books of accounts such as the opening balance of project A-8, Westend, New Delhi stated at INR 2,43,62,710/- is matching with the opening balance as per the books of accounts. The total cost of construction on this project is noted at INR 6,46,49,715/- as against which total cost of INR 6,20,59,394/- was recorded in the books of accounts. When the document was found and seized from the possession of the assessee, it is the duty of the assessee to rebut the same with proper explanation however, assessee has failed to do before the lower authorities nor even before us. While confirming the addition, the Ld. CIT(A) in para 20 of the impugned order has observed as under:-

20. "I have considered the facts of the case, the basis of the additions made by the A.O. in the assessment order, the arguments of the A.R. during the assessment as well as appellate proceedings. It is submitted by the AR that the perusal of the assessment order clearly shows that the AO has proceeded to make the observations after pursuing of the noting in the seized records. He did not confront the impugned discrepancies to the assessee so as to seek his explanation on the same. This means a one sided view had been taken. The perusal of the submissions of the appellant company shows that there was an expenditure of Rs. 7,69,15,403/- with reference to the property at A-8, Westend incurred up to A.Y. 2009-10. The said property had been sold for an amount of Rs. 6.85 crore in the A.Y. 2009-10. It is further seen that the appellant had claimed that the figure of total expenses of Rs. 6,46,49,715/- as recorded in the seized document was prepared by an accountant to analyse the estimated cost and revenue with respect to the two projects being developed. It was also contended that the said figures could not be compared with the audited financial statements.

The claim of the appellant, that the impugned figure on the seized document were mere estimates and did not represent record of actual expenditure that had taken place, is not acceptable as the figures are not rounded but are specific to the last rupee. Further the total expenses as recorded in the seized document with reference the A-9/10, Vasant Vihar, New Delhi, to the tune of Rs. 4,64,42,586/- are

as per the books of accounts for the A.Y. 2008-09. This being so there is no logical reason to accept the contention of the appellant that total expenses figure with respect to the A-8, Westend to the tune of Rs. 6,46,49,751/- was an estimate. The complete reading of the document, therefore, leads to only one inescapable conclusion that the said expenditure in excess of what has been recorded in the books of accounts is out of income available with the appellant which had not been disclosed. It also needs to be appreciated that, the figure of cost as per books of accounts for the 2009-10 to the tune of Rs. 7,65,15,403/ does not take away the fact of having incurred the excess expenditure in A.Y. 2008-09. In the circumstances, the addition made by the AO is directed to be confirmed.”

12. Before us, the Ld.AR for the assessee failed to controvert the findings of ld. CIT(A) wherein it is observed by the Ld. CIT(A) that the figures mentioned therein are specific to the last Rupee and the other figures are also matching with the books of accounts. Under these circumstances, we are in agreement with the observations of the Ld.CIT(A) and find no force in the arguments of the Ld.AR for the assessee that this document is a dumb document. The judgement relied upon by the assessee are on different facts where revenue has failed to correlate the entries with the respective assessee or the figure noted does not represent any transaction. Whereas in the instant case, as observed above, almost all the figures are matching and are in relation to the projects carried out by the assessee. In view of these facts of the case, we confirmed the addition of INR 25,90,321/- made by the AO and uphold by the Ld.CIT(A). Ground No.5 raised by the assessee is dismissed.

13. Ground No.6 raised by the assessee is with regard to claim of depreciation on Gym equipments.

14. The AO while disallowing the depreciation claimed by the assessee on gym equipment's has observed that in preceding years, the depreciation of Gym

equipments was disallowed by observing that the Gym was not installed at the business premises.

15. Before us, the Ld.AR for the assessee submitted that the Gym was installed at the office premises and the depreciation was claimed on WDV basis. Since these equipments were used by the staff for betterment of their health and life style therefore, its depreciation claimed deserved to be allowed under business expediency.

16. On the other hand, the Ld.CIT DR supports the orders of the lower authorities and submits that during the course of search, these equipments were not found installed in the office of the assessee therefore, it could not said that these were used by the office staff. Further in earlier years such disallowance was made and confirmed thus as per principle of consistency the disallowance should be uphold.

17. After considering the arguments of both the parties, we find that it is not the first year that the depreciation on the Gym equipments was disallowed in the case of the assessee. It is also a matter of fact that no Gym equipments were found installed at the office premises when the search was taken place. Neither before the AO nor before the Ld.CIT(A) nor before us, the Ld.AR for the assessee could controvert the findings that the Gym equipments were not installed at the office premises. This being so, the action of the AO in disallowing the deprecation on Gym equipments is found to be correct which is hereby upheld. Ground No.6 raised by the assessee is thus dismissed.

18. In the result, the appeal of the assessee is dismissed.

19. Now, we take Revenue's appeal in **ITA No.4768/Del/2016 [Assessment Year 2008-09]**.

20. Ground No.1(i) raised by the Revenue is in relation to deletion of addition of INR 5,50,00,000/- made by the AO on account of unaccounted sale consideration received by the assessee from the sale of A-8, Westend, New Delhi.

21. The AO observed that in terms of Agreement to Sell dated 28.05.2007 between Shri R.C.Puri & Shri Inder Mohan Thapar, Director of the assessee company, the said property was agreed to be sold for INR 12 crores. The assessee has also received advance of INR 3 crores against such Agreement. However, finally the assessee has shown the said property as sold for INR 6.5 crores only to some other entity and therefore, the AO made an addition of differential amount of INR 5.5 crores as undisclosed receipts.

22. The Ld.CIT(A) after considering the arguments of the assessee has deleted the addition.

23. During the course of hearing, the Ld.CIT DR for the Revenue in support of the addition made by AO argued that once the Agreement to Sell was entered into INR 12 crores, it is surprising that that later, the property was sold at INR 6.5 crores only that too within short period of time. The claim of the assessee that the agreement with Shri R.C.Puri was cancelled is nothing but cooked up story in support of the arguments that no cash was received. He, therefore, prayed for the restoration of the addition of INR 5.5 crores made by AO.

24. On the other hand, Ld.AR for the assessee supports the order of Ld.CIT(A) and submits that the assessee has initially entered into the Agreement to Sell with Shri R. C.Puri for INR 12 crores and received INR 3 crores as advance. The said Agreement with Shri R.C.Puri was cancelled and

the cancellation Agreement alongwith evidence of refund of advance amount received earlier were also filed before the lower authorities which are available at Page 262 to 265 of the Paper Book. The Ld.AR for the assessee further submits that the assessee has refunded the advance amount of INR 3 crores to Shri R.C.Puri through banking channel. He further submits that ultimately the property was sold to M/s. Prerna Infradevelopers Pvt. Ltd. for INR 6.5 crores in terms of Agreement to Sell made and executed on 19.11.2008. The Ld.AR for the assessee further submits that the stamp authority has accepted the sale consideration of INR 6.5 crores which was disclosed in the agreement. Moreover, the assessee has also received INR 35.00 Lakhs for extra work which is also not in dispute. Ld AR further stated that the sale was taken place in subsequent assessment year and even otherwise addition, if any, is to be made on this account, the same should be made in the year when the property was sold and not in the present year where the assessee has entered into an agreement which was later cancelled. Accordingly, he submits that the Ld. CIT(A) after considering these facts has deleted the addition which deserves to be upheld.

25. After considering the arguments put forth by the parties, we find that in the instant case, the Agreement to Sell executed between the assessee and Shri R.C.Puri stood cancelled and the advance received was refunded through bank. The subject property was finally sold to M/s. Prerna Infradevelopers Pvt. Ltd. for INR 6.5 crores in FY 2008-09 relevant to AY 2009-10 wherein the loss incurred was duly accepted by the Department. It is also seen that the assessee has filed the cancellation agreement that Shri R.C.Puri had refunded advance amount of INR 3 crores which was not doubted by the AO nor any

further enquiries were made nor any material was brought on record to hold that such cancellation agreement was sham document. Under these circumstances, we do not find any reason to interfere in the order of the Ld. CIT(A) in deleting the addition of INR 5.5 crores. As a result, Ground No.1(i) raised by the Revenue is dismissed.

26. Ground No.1(ii) raised by the Revenue is in relation to deletion of addition of INR 56 Lakhs on account of disallowance made out of rent paid on for the property A-48/10, Vasant Vihar, New Delhi by holding that said premises was never taken by the assessee for business purposes.

27. Before us, the Ld.CIT DR submits that before the AO, in the reply filed, the assessee specifically stated that its registered office cum godown is situated at B-10, Shivalik, Malviya Nagar, New Delhi and it had no other godown/branch office. The assessee had paid rent of INR 56 Lakhs and also paid security deposits of INR 16 Lakhs to Shri Atul Raheja for the premises, basement and ground floor at A-48, Vasant Marg, Vasant Vihar, New Delhi. Ld. DR submitted that when the assessee itself has stated that it had not maintained any office at A-48, Vasant Vihar, New Delhi therefore, the AO has rightly disallowed the rent claimed by the assessee as business expenditure which disallowance deserves to be restored.

28. On the other hand, the Ld.AR for the assessee submits that the assessee is having its office premise at A-48, Vasant Vihar, New Delhi. The fact that this premise was used for business purposes is established from the fact that the search u/s 132 of the Act was carried out at this premise by the department by treating it as office premise and a Panchnama was also drawn on this premises. The claim of the assessee was that this premise was used for the

purpose of business and thus the payment of rent is business expenditure. He thus requested for the confirmation of the order of Ld.CIT(A), deleting the disallowance so made after appreciating these facts.

29. We have heard the rival submissions and perused the material available on record. It is seen that the assessee is maintaining its office at A-48, Vasant Vihar, New Delhi where search was carried out and Panchnama was drawn during the search. This clearly established that premise in question i.e. A-48, Vasant Vihar, New Delhi was occupied by the appellant company for its office. This is a clear evidence that the assessee business premise was situated at this place. The assessee had filed all the necessary evidences such as rent agreement, ledger account, TDS certificate, bank statement and ownership proof in the hands of the landlord. The assessee has claimed depreciation of the assets installed at this premise which has been allowed. Merely for the inadvertent error of not intimating this premises in the reply filed, cannot be the sole basis of making disallowance by ignoring ample evidences filed by the assessee. Under these circumstances, we find no reason to interfere in the order of the Ld.CIT(A) in deleting the disallowance so made which is hereby upheld. Thus, Ground No.1(ii) of the Revenue's appeal is dismissed.

30. In Ground No.1(iii), the Revenue has challenged the deletion of addition of INR 6,33,926/- on account of foreign travel by Directors alongwith their family members.

31. In first appeal, the Ld. CIT(A) has deleted the disallowance so made and observed that the travelling was carried out by the Directors and employees of

the assessee company to buy the marble from Italy and majority of trips were carried out to Italy.

32. Before us, the Ld.CIT DR for the Revenue submits that the assessee has filed no details during the course of assessment proceedings with regard to the travelling carried out and at the appellate stage, the assessee has filed additional evidences with respect to the foreign travel. It is submitted by the Ld.CIT DR that all the trips were carried out by the Directors and if the claim of the assessee is accepted, they were to procure the marble from Italy, it is not understandable as under the modern era, information technology like internet, e-mails etc., all these details are available online and there is no need to incur expenditure on such kinds of tours. He thus requested that the AO has rightly disallowed the expenses and the same deserves to be restored.

33. On the other hand, the Ld.AR for the assessee vehemently supported the order of the Ld.CIT(A) and submits that the assessee is engaged in the business of construction where it is constructing high-end houses. Thus such houses needs good quality of material and in this process, the assessee fixed the Italian marble on the floors for which regular visits were made to the Italy for selection of stone etc. He further submits that from the table at page 49 & 50 of the appellate order, it could be seen that the travelling were undertaken either by the Directors of the company or by the employees and all the visits were to Italy. Had there been the pleasure trips how a person would travel to one country on regular basis. It is also a fact that ultimately the marble was purchased and fixed in the houses which fact had not been denied therefore, the expenditure claimed on foreign travelling is business expenditure incurred under commercial expediency and therefore, the Ld.CIT(A) has rightly allowed

the same as business expenditure therefore, he humbly prayed that such order deserves to be upheld.

34. After considering the arguments put forth by both the parties, we find that the AO simply on assumption and presumption basis has made the disallowance. From the details filed during the course of appellate proceedings as additional evidences which are discussed by the Ld.CIT(A) in para 13 of its order, it is seen that the assessee has been able to demonstrate that the travelling were carried out for business purposes and ultimately marble was purchased from Italy and brought to India through Italian Freight carriers, Vapi Akash Stone Industries Ltd. Silvassa. It is also seen that in addition to the travelling undertaken by the Directors, Shri Inder Mohan Thapar & Smt. Jaspreet Thapar, one Shri Naveen Punjabi who is the employee of the assessee company also visited Italy for making selection of the marble, stone etc. Thus, it is not a case where pleasure trips were carried out. The Ld.CIT(A) while deleting the disallowance in para 31 has observed as under:-

31. "I am in agreement with the appellant company's submissions on the issue of admission of additional evidence as the assessment proceedings in the Thapar Homes group of cases numbering about 3 hundred had been practically taken up in the month of October/ November and assessment had been framed by end of December, 2010. A period of two months or so to handle the search assessment and to meet the detailed requirements of the AO in number of cases, the possibility that certain requirements could not be meet is very high. Even otherwise the additional evidence sort to be filed happens to be confirmation in respect of advances received in respect of booking of space and travelling expenses bills etc. adverse evidence if any had already been seized during the course of search operation. In the circumstances the additional evidence in

the form of confirmation could not possibly be manipulated. Therefore the additional evidence sort to be filed had been admitted for adjudication.”

35. After considering the facts, we find that the Ld.CIT(A) has considered all the facts and such observations could not be controverted by the Revenue before us. Therefore, the order of the Ld.CIT(A) is hereby upheld. Ground No.1(iii) raised by the Revenue is dismissed.

36. In Ground No.1(iv) where the addition of INR 5 crores on account of deemed profit deleted by the Ld.CIT(A).

37. Brief facts leading to this issue are that in the assessment order, the AO observed that the assessee has claimed total cost of INR 4,64,42,585/- on the construction of A-9/10, Vasant Vihar, New Delhi. However, it has received only INR 4.50 crores as consideration on termination of its rights. He therefore, made an addition of INR 5 crores on assumption basis to protect the interest of the Revenue. The AO further observed that the expenses of INR 4.46 crores should also be disallowed as no details were submitted. Before the Ld.CIT(A), the assessee claimed that it had entered into an Agreement dated 29.08.2004 with the owners Smt. Gomti Balasudermanium, R/o-AB-86, Anna Nagar, Chennai, Smt. Anuradha Ramaiaha and Shri S.Ramaiah. As per this Agreement, the assessee has initially paid INR 75 Lakhs for the acquisition of property No.A-9/10, Vasant Vihar, New Delhi. Thereafter, some dispute arising between the parties and the owners of the property were reluctant to execute the Agreement. Therefore, the assessee company filed a suit before the Hon'ble Civil Court, Delhi and paid fee of INR 7.25 Lakhs. This amount of INR 75 Lakhs being fee paid to the Court was added to the total cost. Thereafter

the assessee company had paid total amount of INR 3,81,00,814/- to the owners in terms of MCD mutation.

38. Besides this, the assessee also incurred a sum of INR 1,16,771.63 during FY 2006-07 relevant to AY 2007-08. Thus, the total cost as on the first day of the previous year as incurred by the assessee on this property was INR 4,63,25,814/-. During the year under appeal in terms of agreement dated 10.05.2007, the assessee has transferred the rights of construction in favour of the Upal Construction P.Ltd. for a total consideration of INR 4.50 crores which was duly received by the assessee company. In this process, the assessee company had incurred loss of INR 14,42,585/-.

39. The Ld.CIT(A) after considering these facts, has deleted the additions made on presumption basis against which the Revenue is in appeal.

40. Before us, the Ld.CIT DR supported the order of the AO and submitted that it is not acceptable that a person is having incurred cost of more than INR 4.64 crores on the property situated at the prime location at Vasant Vihar, New Delhi thereafter, relinquish rights of construction in terms of cancellation agreement for only INR 4.5 crores. The AO thus is correct in presuming that the assessee has received INR 5 crores over and above the said amount of INR 4.5 crores and therefore, such order deserved to be restored.

41. On the other hand, the Ld.AR for the assessee vehemently supported the order of the Ld.CIT(A) and submitted that the facts of the case are very well described in the appellate order at para 37 at pages 55 to 58 of the order and further submitted that the addition is made without any material whatsoever, found during the course of search, indicating that the assessee has received the amount of INR 5 crores in cash over and above the sum of INR 4.5 crores

as per relinquishment agreement. He further submits that from the perusal of the assessment order, it is clear that this addition is made by the AO on presumption basis only to protect the interest of Revenue and therefore, the action of the Ld.CIT(A) of deleting the same after considering the factual aspects, deserves to be upheld.

42. We have heard the rival submissions and perused the material available on record. On perusal of the order of Ld.CIT(A), we find that the assessee has been able to demonstrate the breakup of the total cost claimed and INR 4,64,42,565/- and further filed the necessary cancellation agreement which has not been doubted by the AO. Had there been any doubts in the mind of the AO with respect to the consideration received on cancellation agreement, he could have make independent enquiries from the other party which has not been done either during the course of assessment proceedings or during the remand proceedings. Further, no incriminating material to the effect was found/seized during the course of search. Under these circumstances, we are in full agreement with the observations made by the Ld.CIT(A) in deleting the addition made on presumption basis to protect the interest of the Revenue. As a result, the order of Ld.CIT(A) is upheld on this score. Ground No.1(iv) of the Revenue is thus dismissed.

43. Ground No.1(v) raised by the Revenue is that the addition of INR 3 crores of the amount of advance received from one Shri R.C.Puri was deleted by Ld.CIT(A). The AO had made this addition by holding that the assessee has failed to justify the capacity of creditors as neither address nor PAN nor bank statement of Shri R.C.Puri was filed. During the course of appellate proceedings, the assessee filed additional evidences which includes Agreement

to Sell with Shri R.C.Puri, the cancellation agreement and it was submitted that the amount was received as advance for sale of property at A-8, Westend for which the AO has already made an addition by treating the said sale consideration of INR 12 crores. Accordingly, the CIT(A) has deleted the addition.

44. Before us, the Ld.CIT DR for the Revenue supported the order of the AO and submitted that since the assessee has not being able to discharge the burden casted upon it proving the creditworthiness of the parties who had given the advance therefore, the addition was rightly made and he requested for restoration of the same.

45. On the other hand, Ld.AR for the assessee vehemently supported the order of the Ld.CIT(A) and submitted that the AO has taken into consideration the Agreement to Sell executed between the assessee and Shri R.C.Puri where the assessee had agreed to sale the property A-8, Westend at INR 12 crores and received advance of INR 3 crores. Based on this agreement, the AO had made an addition of INR 5.5 crores and simultaneously on the other hand, it doubted the receipt of INR 3 crores from Shri R.C.Puri. He further submnitted that all the whereabouts of SHri R.C.Puri were available in the Agreement to Sell available with the AO including PAN. Thus, it cannot be said that no details were filed by the assessee. Accordingly, he prayed for the confirmation of the order of the Ld.CIT(A) in deleting the addition.

46. After considering the arguments, we find that Ld.CIT(A) in para 41 of its order has discussed this issue at length while deleting the addition. The observation of the Ld.CIT(A) are as under:-

41. *"I have considered the facts of the case, the basis of additions made by the AO and the arguments of the AR during assessment proceedings as well as appellate proceedings. It is seen that the agreement to sell of property at A-8, Westend had been brought on record by the AO himself to highlight the sale consideration being Rs. 12 crore and agreement also records that an advance of Rs. 3,00,00,000/- was received. The said agreement to sell has also been made the basis for an addition of Rs. 5.50 crore by the AO. The said agreement clearly records the identity/address particulars of Sh. R. C. Puri as under:-*

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The impugned agreement also recorded the particulars of the payment as being made by cheque no. 000039 dated 24.5.2007 drawn on Kotak Mahindra Bank Ltd. Therefore, the observations of the AO that the address of Sh. R.C. Puri was not available on record to verify his creditworthiness is factually incorrect. The said amount of Rs. 3,00,00,000/- has also been paid back by the appellant company as evidenced by the cancellation agreement on 15.09.2008. Therefore, keeping in view the facts, that the amount of Rs.3.00 crore was received by account payee cheques and also returned by the account payee cheque and in pursuance of written agreement wherein name and complete address of the creditor is available to the AO, it could not be said that the identity particulars were not submitted by the assessee. If the AO was not satisfied, regarding the creditworthiness of the said party, he should have made enquiries from Sh. R. C. Puri to bring on record any adverse evidence. The facts of the case clearly show that the primary onus cast upon the appellant had been discharged by filing the said agreement to sell. It is also important to appreciate that the same agreement has been made the basis by the AO to make an addition of Rs. 5.5 crore which means that the said agreement that been accepted to be genuine and containing the facts as they had happened. In the circumstances the said agreement cannot be read partly as correct to the extent of sale consideration being Rs. 12 crore and partly as incorrect with reference to

advance of the Rs. 3 crore received through banking channels. Further, during the search proceedings u/s 132 on the appellant company's premises nothing was found to prove the fact that Rs.3.00 crore is appellant's income and routed through Sh. R. C. Puri. Therefore, the addition made by the AO is directed to be deleted.”

46. Before us, the Ld.CIT DR has failed to controvert the findings given by the Ld.CIT(A) and further looking to the facts that advance of INR 3 crores is duly mentioned in the Agreement to Sell and amount was received through banking channels and it was advance against the property and therefore, we do not find any infirmity in the order of the Ld.CIT(A) deleting the addition, thus the same is hereby upheld. Ground No.1(v) of the Revenue is thus dismissed.

47. In the combined result, appeal of the assessee in **ITA No.2130/Del/2016 (AY 2008-09)** is dismissed and appeal of the Revenue in **ITA No.4768/Del/2016 (AY 2008-09)** is dismissed.

Order pronounced in the open Court on 29.04.2025.

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

Amit Kumar, Sr.P.S

Copy forwarded to:

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

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI