

आयकर अपीलिय अधिकरण  
दिल्ली पीठ "एफ", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अवधेश कुमार मिश्रा, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आअसं.2498 /दिल्ली/2024 (नि.व. 2012-13)  
ITA No. 2498 /DEL/2024 (A.Ys.2012-13)

Rajdarbar Heritage Venture Ltd.,  
12, Ring Road, Lajpat Nagar, Delhi 110024

PAN: AACCK-9842-M

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-21(1),  
CR Building, I.P Estate, Delhi 110002

..... प्रतिवादी/Respondent

आअसं.2502/दिल्ली/2024 (नि.व. 2012-13)  
ITA No. 2502/DEL/2024 (A.Ys.2012-13)

Income Tax Officer, Ward-21(1),  
CR Building, I.P Estate, Delhi 110002

..... अपीलार्थी/Appellant

बनाम Vs.

Rajdarbar Heritage Venture Ltd.,  
12, Ring Road, Lajpat Nagar, Delhi 110024

PAN: AACCK-9842-M

..... प्रतिवादी/Respondent

Assessee by: S/Shri Sudesh Garg, Advocate & Prince Bansal, Chartered Accountant  
Department by : Shri Parveen Rawal, Sr. DR

सुनवाई की तिथि/ Date of hearing : 18.02.2025  
घोषणा की तिथि/ Date of pronouncement: : 09.05.2025

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

The cross appeals by the Revenue and assessee are directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 19.03.2024, for assessment year 2012-13.

2. The facts of the case as emanating from records are: The assessee filed its return of income u/s. 139(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') declaring total income of Rs.38,31,080/-. Assessment u/s. 143(3) of the Act was completed vide order dated 27.03.2015 determining total income of assessee at Rs.121,70,39,930/-. Aggrieved by the said assessment order, the assessee carried the issue in appeal before the CIT(A). The CIT(A) granted part relief to the assessee. Hence, the assessee carried the issue in appeal further before the Tribunal. In the mean time, the Assessing Officer (AO) initiated reassessment proceedings and issued notice u/s. 148 of the Act on 31.03.2019 to the assessee. In reassessment proceedings the AO made additions on those very issues which were subject matter of assessment u/s. 143(3) of the Act including additions on account of bogus and fictitious expenses to the tune of Rs.8,48,89,345/- and alleged bogus loss on issue of shares Rs.42,08,00,000/-. Aggrieved by the assessment order dated 30.12.2019 passed u/s. 147/144 of the Act, the assessee filed appeal before the CIT(A), *inter alia* assailing validity of reopening of assessment as well as additions on merits. The CIT(A) dismissed grounds of appeal raised by the assessee assailing reopening of assessment,

however, on merits the CIT(A) deleted the additions *in toto*. Hence, the Revenue and the assessee are in appeal.

**ITA No. 2502/Del/2024 for AY 2012-13 (Revenue's Appeal)**

3. The Revenue in appeal has raised following grounds:-

“1. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) has erred in deleting addition of Rs 8,48,89,345/- on account of bogus and fictitious expenses.

2. Whether on the facts and circumstances of the case, and in law, the Ld. CIT(A) has erred in deleting addition of Rs 42,08,00,000/- on account of loss on sale of shares.”

4. Shri Parveen Rawal, representing the department placed reliance on the finding of the AO in para 5.1 and 5.5 of the assessment order and prayed for reversing findings of the CIT(A) on both issues. The Id. DR further submitted that the CIT(A) has erred in deleting the addition of Rs.8,48,89,345/- by observing that this would amount to double taxation. As per record, prior to 31.03.2011 possession of the Hotel was vested with the banks and auction of hotel project was in June 2011. Thus, in the Financial Year 2011-12 there could not have been any possibility of construction cost or fix cost as claimed by the assessee. The Id. DR further submitted that as regards the addition of Rs.42.08 crores on account of loss on sale of shares. The CIT(A) has erred in deleting the same stating it to be a double addition. He pointed that in the original assessment order nothing has been mentioned regarding the claim of the loss of Rs.66.09 crores. The AO denied assessee's claim of Long Term Capital Gain and brought the gains of Rs.154,29,06,058/- to tax as business income in assessment u/s. 143(3) of the Act. In First appeal, the CIT(A) deleted the addition. The Revenue carried the issue

further in appeal before the Tribunal and the Hon'ble High Court. At both the forums appeal of the Revenue was dismissed. The Id. DR, thus prayed for upholding findings of the AO on both these issues.

5. Per contra, Shri Sudesh Garg appearing on behalf of the assessee/respondent vehemently defended the impugned order. The Id. Counsel submitted that the additions which are now disputed by the Revenue in appeal were in fact never claimed by the assessee/respondent as loss in original return of income. He prayed for upholding findings of the CIT(A) on this issue and dismissing appeal of the Revenue.

6. Both sides heard, orders of the authorities below examined. The Revenue in appeal has assailed the order of CIT(A) on two counts i.e.

(i) Deleting addition of Rs.8,48,89,345/-; On account of bogus and fictitious expenses on construction/fix cost of hotel. The CIT(A) deleted the addition of Rs.8,48,89,345/- holding that this would amount to double taxation of same amount, as this amount was considered in assessment made u/s. 143(3) of the Act. No material has been placed on record by the Revenue to controvert the findings of the First Appellate Authority. On the contrary, DR has pointed that in assessment made u/s. 143(3) of the Act, the AO denied assessee's claim of LTCG and brought gains to tax as business income. The said addition was deleted by the CIT(A), and the order of CIT(A) was upheld by the Tribunal. This itself, shows that the issue was considered by the Tribunal in assessment proceedings u/s. 143(3) of the Act and had rejected contention of the Revenue. We find no reason to interfere with the findings of the CIT(A), on this issue. Hence, ground no. 1 of appeal is dismissed.

7. Ground no. 2 of appeal by the Revenue is with regard to deleting of addition of Rs.42.08 crore on account of alleged loss on sales of shares. The CIT(A) has deleted addition stating that the issue was considered by the AO in original assessment made u/s. 143(3) of the Act. The same issue cannot be agitated again in reassessment proceedings. The Revenue has admitted the fact that in original assessment proceedings the AO denied assessee's claim of LTCG and brought the gains of Rs.1.54 crores to tax as business income. The said addition was deleted by the CIT(A) and the Department's appeal was dismissed by the Tribunal as well as the Hon'ble High Court.

8. We are of considered view that once the issue has been settled, the same issue cannot be agitated again in reassessment proceedings. Thus, Ground no. 2 of appeal is dismissed being devoid of any merit.

9. In the result, appeal of the Revenue is dismissed.

**ITA No. 2498/Del/2024 for AY 2012-13 (Assessee's Appeal)**

10. The assessee has assailed the order of CIT(A) in rejecting assessee's submissions against reopening of assessment u/s. 147 of the Act. The Id. Counsel for the assessee submitted that in case additions assailed in Department's appeal are dismissed, he would not press the appeal at this stage. Thus, in light of statement made by Id. Counsel for the assessee, the appeal of the assessee is dismissed.

11. In the result, appeal of the Revenue as well as appeal of the assessee is dismissed.

Order pronounced in the open court on Friday the 09<sup>th</sup> day of May, 2025.

Sd/-

(AVDHESH KUMAR MISHRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 9/05/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI