

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Naveen Chandra, Accountant Member**

ITA No. 9446/Del/2019 : Asstt. Year : 2016-17

ACIT, Circle-21(2), New Delhi-110002	Vs	M/s River Builders Pvt. Ltd., C-59, Vivek Vihar, New Delhi-110092
(APPELLANT)		(RESPONDENT)
PAN No. AAECR2730H		

Assessee by : None

Revenue by : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing: 05.05.2025

Date of Pronouncement: 05.05.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

This Revenue's appeal for Assessment Year 2016-17, arises against the CIT(A)-7, New Delhi's in case No. 10415/410/CIT(A)-7/Del/2018-19 dated 06.09.2019, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "the Act")

2. Case called twice. None appears at the assessee's behest. It is accordingly proceeded *ex-parte*.

3. The Revenue raises the following substantive grounds in the instant appeal:

"1. Whether in facts and circumstances of the case, the CIT(A) is correct in deleting the addition made by the AO

to the extent of Rs. 6,00,00,000/- under section 37(1) without examining whether the payment to GDA was made before start up construction of the project or after completion of the project.

2. Whether in facts and circumstances of the case, the CIT(A) is correct in treating the increase in FAR, which has increased construction pace, to be technical violation and thereafter deleting the addition made by the AO.

3. Whether in facts and circumstances of the case, the CIT(A) is correct in deleting the addition made by the AO without even calling for copy of the GDA compounding order or inspection report during the appellate proceedings and hence violated the principles as laid down by Hon'ble Delhi Court in the case of CIT vs. Jansampark Advertising & Marketing Pvt. Ltd.

4. Whether in facts and circumstances of the case, the CIT(A) has erred in deleting the addition made by the AO without examining the underline documents and reasons for the payments made to GDA by the assessee.

5. Whether in facts and circumstances of the case, the CIT(A) has erred in deleting the addition made on car loan interest and depreciation as the same was offered for taxation by the assessee during the assessment proceedings."

4. Learned departmental representative next invites our attention to the CIT(A)'s lower appellate discussion reversing assessment findings disallowing the assessee's claim of payment of Rs.6,00,00,000/- made against sanctioning of excess FAR and other applicable charges, to the Ghaziabad Development Authority ("GDA"); reading as under:

"4.1 Ground no. 2 relates to disallowance of Rs. 6,00,00,000/- paid against sanctioning of excess FAR and towards other applicable charges of GDA. The Assessing Officer has framed the assessment order on the basis of mainly two objections:

- 1) That the amount of Rs. 6 crore paid to GDA is in the nature of penalty.*
- 2) That the amount paid is in dispute.*

It was submitted that the compounding fees paid to the Ghaziabad Development Authority for regularizing a building plan is allowable as deduction since the project was completed and the deviation are within the limit for which the GDA has approved the project. Compounding fees paid to the GDA is neither in the nature of offence nor prohibited by law.

The details of the charges demanded by GDA on account of increased FAR are as under:

		Rs.
1.	Compounding fees	7,12,05,224
2.	Purchasable FAR fees	1,04,17,525
3.	Metrocess fees	3,38,93,055
4.	External development fees	25,39,143
5.	Sub-division charges	4,52,610
6.	Shelter fees	1,75,50,000
7.	Labour cess	27,04,324
	Total	13,55,01,351

The FAR available to the appellant increased from 8372 sq. mtr. to 17,771 sq. mtr. Copies of the sanction plans were also filed. Due to increase in FAR, the GDA has levied additional charges. None of these charges are in the nature of a penalty. By paying the additional fees the appellant has been able to increase the constructed area leading to increase in revenue. It was submitted that the expenses are therefore for the purpose of business and therefore are fully allowable.

The appellant also relied on:

7. Delhi High Court in Commissioner of Income Tax v Lok Nath & Co. (Construction) 1994 147 ITR 624 (Del) held the charge is not on gross receipts but on profits and gains property so called. The profits to be assessed are real profits and they must be ascertained on ordinary principles of commercial expediency. The partnership was formed for the purpose of construction of a multi-storied building called as Himalaya House and for the purpose of selling the major portions of the said building in the form of flats of various customers. The assessed got the original building plans sanctioned and commenced the constructions. The assessed had no right to make deviations from the sanctioned plan or to continue the

construction after the sanction had lapsed. Any constructions thus made would be deemed to have been erected without a proper sanction. The Committee, however, has the power to sanction revised plans so as to regularize the deviations or give ex post facto sanction for the constructions made after the sanction had lapsed by accepting by way of compensation such as it may deem reasonable. It is at that stage that the assessee had to consider the question of payment on the principles of ordinary commercial trading or on grounds of commercial expediency. Seen in the light of the law noticed above, the assessed had the desire to preserve the building and to save a part of it from demolition. The expenditure was for saving of the loss on the alteration of the closing stock of the assessed. Such an expenditure has to be permitted as a deduction made for the purpose of carrying on of business. The question whether a particular expenditure is a revenue expenditure incurred for the purpose of business must be viewed in the larger context of the assessee's business, necessity or expediency. The expenditure of payment of compensation incurred by the assessee has to be regarded as an integral part of the profit-earning process of the assessee. The portion of the buildings thus saved from alteration of demolition remained as a business stock available for sale flat-wise. The assessed by this outgoing of Rs. 4 lakhs procured the portion of the building by which the assessee made profit. The payment is not in the nature of penalty for infraction of law and is a right in holding that it is a permissible deduction in arriving at the profit of business of construction and sale of building, the outgoing being allowed in one assessment year.

2. *Keerthi State Private Limited v Dy. CIT ITA No. 271/Hyd/2016*

Held: No housing project can be completed without any deviation. The question is the extent of deviation. In assessee's case it was within permissible limits, the approving authorities, allowed compounding the deviation by levying compounding fees. Classifiable as penalty charged for violation of certain Rules curable by compounding. As assessee had not been penalized for violation of law compounding fees was deductible in its hands.

3. *The Pune Tribunal in the case of EON hadapsar Infrastructure (P). Ltd. (2016) 159 ITD 0532 (Pune-Trib) held that compounding fee paid for some technical violations without committing any offence is an allowable business expenditure. Even though the said decision is*

not directly on the subject matter, it is equally important while constructing law with respect to compounding fee paid by builders to the municipal corporation for sc technical violations.

Regarding the issue raised by the AO that full payment was not made and that the amount paid is ascertained per liability and is not a contingent liability. In this regard, it was submitted that the GDA had raised a demand of Rs. 13,55,01,351/- on account of various charges levied. The calculations have been made by adopting the circle rate at Rs. 50,00t per sq. mtr. (which is the rate of non-residential properties). The actual circle rate of residential property was only Rs. 24,000 per sq. mtr. The applicant calculated the amount payable on this rate and the liability was determined at Rs. 6,00,00,000/- . The applicant therefore deposited this amount which has been accepted by GDA. However, as a precautionary measure, the application has filed an appeal before Hon'ble High Court to get the demand rectified.

It was submitted that the amount of Rs. 6 crore deposited with GDA was on account of crystallized liability which was paid during the previous year. It was duly reflected as an expense in the audited accounts of the applicant. Therefore, it is wrong to say that the amount paid is on account of disputed demand.

In view of the above, it is apparent that the charges paid were in the nature of business expenditure leading to increased FAR and therefore increased revenue and there was no element of penalty in it. Further the amount claimed is same as that was crystallized and paid during the year. Hence the grounds of appeal are allowed."

5. Learned departmental representative vehemently argues during the course of hearing that the Assessing Officer had rightly disallowed the assessee's impugned claim as it had not only failed to prove the same to have been incurred only and exclusively for the purpose of business by filing cogent supportive evidence but also it is an instance of a payment claim which is barred by law u/s 37 r.w. Explanation (1) thereof.

6. These Revenue's vehement contentions failed to evoke our concurrence. We see to make it clear that the assessee company herein is engaged in real estate business who had made the impugned payments to the sanctioning authority namely M/s Ghaziabad Development Authority, in the regular course of its business i.e. regularization of building plan etc. the assessee's impugned payment are admittedly not in dispute at all as the Revenue's endeavour herein is to get same disallowed by quoting section 37(1) of the Act r.w. Explanation (1) thereto. It has further come on record that the learned CIT(A)'s detailed lower appellate discussion has already considered the instant issue at length thereby concluding that the assessee had made the impugned payments in the nature of additional benefits etc. to increase the constructed area leading to consequential higher revenues. There is also no indication in the assessment findings or during the course of hearing that these payments have been made for any purpose which is an offence or prohibited by law; whatsoever, so as to be covered under the above Explanation.

7. We thus conclude in this factual backdrop that the learned CIT(A) herein has rightly accepted the assessee's above sole substantive grievance which hardly requires our interference. Rejected accordingly.

8. This Revenue's appeal is dismissed.

Order Pronounced in the Open Court on 05/05/2025.

Sd/-

(Naveen Chandra)
Accountant Member

Dated: 05/05/2025

Sd/-

(Satbeer Singh Godara)
Judicial Member

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR