

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

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 4070/DEL/2025
Assessment Year: 2013-14**

DCIT, Central Circle, Ghaziabad.	<u>Vs</u>	M/s Dee Ess Properties Pvt. Ltd. 206, 207 Ansal Satyam RDC, Rajnagar, Ghaziabad-201002. PAN: AABCD 8034 H
APPELLANT		RESPONDENT
Assessee represented by	Shri Satyajeet Goel, CA	
Department represented by	Shri Manish Gupta, Sr. DR	
Date of hearing	12.01.2026	
Date of pronouncement	28.01.2026	

ORDER

PER Ms. MADHUMITA ROY, JM:

The instant Revenue’s appeal is directed against the order dated 28.04.2025 [DIN: ITBA/APL/M/250/2025-26/1075841308(1)], passed by the Commissioner of Income Tax (Appeals)-3, Noida, arising out of the order dated 29.03.2016 passed by the Income Tax Officer, Ward-1(2), Ghaziabad, in proceedings under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), for assessment year 2013-14.

2. Following grounds of appeal taken by the Revenue for adjudication:

“1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs. 11,54,500/- made on account of payments to labourers shown as payable without considering the facts that the said amount shown as payable as on 31.03.2023 is prima facie a bogus liability particularly when the Managing Director has failed to submit the copy of ledger of payment made in subsequent year along with copy of payment vouchers also that accordingly, the books of accounts of the assessee were rejected by invoking section 145(3) of the Income Tax Act, 1961.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs. 2 34,45,175/- on account of sale of land being considered as capital gain without considering the facts that the assessee has not shown the land as its stock in trade.

3. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the additions of Rs. 10,00,000/- made u/s 68 of the Act, on account of credit entry in the name of Shaktiman Soloman Pvt. Ltd. without considering 3 the facts that during assessment proceedings, no response was received from the assessee regarding query raised regarding payment of Rs. 10,00,000/- received from Shaktiman Soloman Pvt Ltd on 28.01.2013 and not repaid and also no entry was found under liability side of the balance sheet.

4. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs.2,42,00,000/- made u/s 69 of the Act, on account of transaction with M/s. Anand Educational Society without considering the facts that said amount was debited on 11.03.2012 to M/s Anand Educational Society and the same had neither been repaid nor any such entry was found under the head "Assets" in the Balance Sheet as on 31.03.2013.

5. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs.1,50,00,000/- made u/s 69 of the Act, on account of credit transaction from M/s. Saurabh Buildcon Pvt. Ltd. in different dates during A.Y. 2012-13 without considering the facts that the amount so given has not been squared up during A.Y. 2012-13 OR 2013-14 and also no such entry was found under the head "Assets" of the Balance Sheet as on 31.03.2013.

6. Whether on facts and circumstances of the case and in law, the Ld. CIT(A)-3, Noida has erred in deleting the addition of Rs. 2,75,50,000/- on

account of purchase of agricultural land from 6 undisclosed sources without considering the facts that the assessee has failed to produce supporting documentary evidences during the assessment proceedings even after providing multiple opportunities.

7. That the above grounds are without prejudice to each other and appellant craves leave to add OR amend any other more ground of appeal as stated above as and when needs for doing so may arise.”

3. Facts of the case, in brief, are that for A.Y. 2013-14 the assessee filed its return of income on 27.09.2013 declaring income of Rs. 7,440/-. The case was selected for scrutiny through CASS. The assessee complied with the statutory notices issued by the AO. The AO completed the scrutiny assessment at a total income of Rs. 6,41,04,693/- as against returned income of Rs. 7,440/-, inter alia, by making following additions:

- i. Addition of Rs. 8,50,000/- & Rs. 11,54,500/- on account of payments to labourers shown as payable.
- ii. Addition of Rs. 34,45,175/- on account of sale of land being considered as capital gain.
- iii. Addition of Rs. 10,00,000/- on account of credit entry in the name of Shaktiman Soloman Pvt. Ltd.
- iv. Addition of Rs. 2,42,00,000/- on account of transaction with Anand Educational Society.
- v. Addition of Rs. 1.50 crores on account of credit transaction from Saurabh Buildcon Pvt. Ltd.
- vi. Addition of Rs. 2,75,50,000/- on account of purchase of agricultural land from undisclosed sources.

4. Aggrieved against it the assessee preferred appeal before the Ld. CIT(Appeals) who restricted the addition to Rs. 8,50,000/- and deleted rest of the additions made by the Ld. AO. Aggrieved against the order of the Ld. CIT(A), deleting the additions made by the AO now the Revenue is in appeal before us.

5. Ground No. 1 relates to addition of Rs. 8,50,000/- and Rs. 11,54,500/-in respect of disallowance of labour payable expenses. It is the case of the assessee that the said expenditure was incurred for development of land and the same was neither debited to the P&L account nor claimed by the assessee against the business income and therefore the disallowance is totally uncalled for. In this regard the ledger account of land wherein the said expense has been added to the cost of the land had duly been placed before the Ld. CIT(A) considering which the Ld. CIT(A) finally deleted the addition amounting to Rs. 11,54,500/- and confirmed the addition of Rs. 8,50,000/- with the following observation:

“As per appellant, during the year, the total expenses in improvement of land were made at Rs. 25,00,000/- out of which, Rs 8.5 lacs was payable and balance was paid & duly recorded in the books of accounts. Also, as per appellant, the expenses were never debited to the profit & loss account. Further, the appellant stated that, even if, the said expenditure is to be considered excessive, it will only reduce cost of improvement of land which has been adjusted to the cost of acquisition of agricultural land which is not a capital asset leading thereby to no difference in the final outcome of taxability of said land.

As far as labor payable expenses of Rs. 8.5 lacs are concerned, the AO is right in his conclusion that the labor who works on day to day basis demands its dues at the end of the day and this fact has been acknowledged

by the MD of the firm in his statement recorded during the course of assessment. Accordingly, it is a case wherein the expense has been incurred, even though it has been capitalized, however as per the statements recorded of the authorized person, the same has been paid in the year under consideration. Despite the fact that the MD of the assessee firm acknowledged that the payment to labor was made on day to day basis, Rs. 8.5 lacs was kept as payable towards labor at the end of the Financial Year. It appears from above that the expenditure to the extent of Rs. 8.5 lacs has been incurred outside the books of accounts. As far as the disallowances calculated by the AO on the average rate of laborers and trucks is concerned, the same is made on mere assumptions. The expenditure which has been charged and routed through the books of accounts and also paid during the year cannot be disallowed on presumptions. On the other hand, the labor payable expenses to the tune of Rs. 8.5 lacs cannot be held to be genuine as the MD of the firm has himself acknowledged that the payments were made on day to day basis. This leads to the conclusion that the outstanding amount of Rs. 8.5 lacs was paid during the year from sources which could not be explained by the appellant. Accordingly, the addition made by the AO is restricted to Rs. 8.5 lacs being unaccounted expenditure u/s 69C of the Income Tax Act, 1961. Therefore, these grounds of appeal are partly allowed.”

5.1 The Revenue has come up in appeal with regard to deletion of addition of Rs. 11,54,500/- which has duly been considered by the Ld. CIT(A) as the same was never debited to the P&L account and furthermore the expenditure being considered too excessive it could only reduce the cost of improvement of land which has been adjusted to the cost of acquisition of agricultural land which is neither a capital asset meaning thereby no difference in the final outcome of the taxability of the said amount. In that view of the matter the order of Ld. CIT(A) on this count is found to be just and proper not to warrant any interference. Ground is dismissed.

6. In Ground No. 2 the Revenue has challenged the deletion of addition of 34,45,175/- on account of sale of land being considered as capital gain. Facts of the case is this that the land being agricultural in nature situated beyond 12 kms. From the municipal limit which has already been noted by the Ld. CIT(A) at page 30 of the impugned order further accepted by the Ld. AO as it appears from the remand report at para 5.5 of page 24 of the impugned order before us considering the CBDT Circular No. 17/2015 dated 06.10.2015 on the issue of measurement of difference of land for the purpose of Section 2(14)(iii)(b) of the Act, contents whereof are appearing at page 30 of the impugned order considering the difference in the rate the land when found to be agriculture in nature cannot be classified as a capital asset the deletion of addition on account of capital gains whereof is found to be just and proper so as not to warrant any interference. This ground of appeal therefore fails.

7. In Ground No. 3 the Revenue has challenged the order of Ld. CIT(A) in deleting the addition of Rs. 10,00,000/- made by the Ld. AO under Section 68 of the Act on account of credit entry in the name of Shaktiman soloman Pvt. Ltd. It is seen that the Ld. AO made the addition by observing that such amount was not repaid and was not reflected on the liability side of the balance sheet. In appeal the Ld. CIT(A) deleted the addition, inter alia, by observing as under:

“Further, as per appellant, the observation of the AO is factually wrong and it appears that the AO has not considered the facts and evidences in the

correct manner. Further, as per appellant, during the year under consideration the appellant has sold an immovable property being agricultural land situated at Khasra no. 391, Village Masoori, Pargana Dasha, Tehsil and District Ghaziabad measuring 2647 Hectare for a total consideration of Rs. 58,50,000/-. The appellant has also earned a gain of Rs. 17,35,081/- on sale of said land and the same has been duly disclosed in the financial statements at Schedule 18 of the Profit & Loss account. Further, as per appellant, the company M/s. Shaktiman Soloman Pvt. Ltd. during the year has paid the total amount of Rs. 58,50,000/- in the following manner:

<i>S. No.</i>	<i>Date</i>	<i>Mode</i>	<i>Amount</i>
<i>1.</i>	<i>28.01.2013</i>	<i>Cash</i>	<i>23,50,000</i>
<i>2.</i>	<i>28.01.2013</i>	<i>Banking Channel</i>	<i>25,0,000</i>
<i>3.</i>	<i>05.01.2013</i>	<i>Banking Channel</i>	<i>10,00,000</i>

Further, as per appellant, the copy of the ledger account of the said party in the books of accounts has been filed with the submissions along with the copy of the registered sale deed of the property sold to said party in the year under consideration.

From the above discussion, it is apparent that the credit of Rs. 10 lacs is on account of the sale of land as shown by the assessee in his return of income, hence the addition made by the AO is deleted and this ground of appeal is allowed.

7.1 The Ld. CIT(A) has deleted the impugned addition by concluding that the credit of impugned amount of Rs. 10 lakhs was on account of sale of land which was shown by the assessee in its return of income. The order of Ld. CIT(A) is based on examination of documentary evidence placed by the assessee before him. We see no reason to deviate from the order of Ld. CIT(A) on the issue in question. Ground fails.

8. In Ground No. 4 the Revenue has challenged the order of Ld. CIT(A) against deletion of addition of Rs. 2,42,00,000/- made by the Ld. AO under Section 69 of the Act on account of amount being paid to M/s Anand Educational Society but not shown in the asset. The assessee in fact during the year under consideration purchased immovable property situated at Khasra No. 831 village & pargana Dasna tehsil & district Ghaziabad from M/s Dayanand Pushpa Devi Charitable Trust for a total consideration of Rs. 2,45,85,000/- by way of three separate registered sale-deeds details whereof is as follows:

<i>S. No.</i>	<i>Particulars</i>	<i>Area</i>	<i>Date of registered Sale Deed</i>	<i>Amount</i>
1	<i>Khasra No. 831, Village & Pargana Dasna, Tehsil District Ghaziabad.</i>	<i>26335 Hectare</i>	<i>23.01.2013</i>	<i>Rs. 71,60,000/-</i>
2.	<i>Khasra No. 831, Village & Pargana Dasna, Tehsil District Ghaziabad.</i>	<i>26335 Hectare</i>	<i>23.01.2013</i>	<i>Rs. 71,60,000/-</i>
3.	<i>Khasra No. 831, Village & Pargana Dasna, Tehsil District Ghaziabad.</i>	<i>668.88 Sq. Mtr.</i>	<i>18.02.2013</i>	<i>Rs. 1,02,65,000/-</i>

8.1 In fact that particular payment was made through the society being managed by the promoter group of the appellant i.e. M/s Anand Education Society which was reimbursed on 11.03.2013 when that particular amount squared off during the year under consideration the same was therefore not appearing in the balance-sheet and further when the corresponding land being purchased was disclosed under the head Non-Current Investment at the asset side of the balance-sheet the decision in deleting the addition made by the Ld. AO considering the entire set of documents including the ledger account of the said property and the party M/s Dayanand

Pushpadevi Charitable Trust by the Ld. CIT(A) is found to be acceptable. This ground of appeal is thus has no merit and therefore dismissed.

9. In Ground No. 5 the Revenue has challenged the action of the Ld. CIT(A) in deleting the addition of Rs. 1.50 crores made by the Ld. AO on account of credit transaction from Saurabh Buildcon Pvt. Ltd. The Ld. AO made the impugned addition of Rs. 1.5 crores under Section 69 of the Act on the basis that the amount of Rs. 1.5 crores was given by the assessee to Saurabh Buildcon Pvt. Ltd. on different dates during AY 2012-13 and the said amounts had been squared off either during AY 2012-13 or during AY 2013-14 and that no entry under the head of asset was shown in the balance sheet as on 31.03.2013. In appeal, the Ld. CIT(A) deleted the addition, inter alia, by observing as under:

“The appellant during the appeal proceedings stated that the addition which has been made in the A.Y. 2013-14 actually pertains to the amount paid In A.Y. 2012-13, i.e. in the assessment order itself the AO has also mentioned that the said amounts have been paid in A.Y. 2012-13 only. Thus, as per AR, the addition so made is bad in law as the same cannot be made in the year under consideration as the same pertains to prior year. Further, as per AR, the appellant company had received an amount of Rs. 1,50,00,000/- from M/s. Saurabh Buildcor Pvt. Ltd. by way of an advance for a piece of land during the A.Y. 2011-12 and the said amount was received through banking channels only and was duly reflected in the financial statements for the A.Y. 2011-12 under the head INVESTMENTS at Schedule 5.

Further, as per appellant, the copy of account of the said party for the A.Y. 2011-12 and A.Y. 2012-13 along with the financial statements of the appellant for the A.Y. 2011-12 have been filed with the submissions. Also, the amount in question was duly repaid in the A.Y. 2012-13, the fact which has been accepted and stated by the AO in the order itself. It appears from

above that the payments to Saurabh Buildcon Pvt. Ltd. in AY 2012-13 are merely repayment of an amount received in AY 2011-12 and are not relevant to the year under consideration i.e. AY 2013-14. In view of the above discussion, the contentions of the appellant are found to be correct and the addition made by the AO is deleted and this ground of appeal is allowed.”

9.1 The Ld. CIT(A) has deleted the addition by verifying that that the impugned amount duly repaid in the subsequent A.Y. 2012-13 which fact remained uncontroverted by the AO and as such the payments to Saurabh Buildcon Pvt. Ltd. in AY 2012-13 are merely repayment of an amount received in AY 2011-12 and are not relevant to AY 2013-14. We see no flaw or infirmity in the order of Ld. CIT(A) in arriving at his conclusion. Accordingly, order of Ld. CIT(A) on the issue in question is affirmed. Ground fails.

No other ground is raised for adjudication.

10. In the result, Revenue’s appeal is hereby dismissed.

Order pronounced in open court on 28.01.2026.

Sd/-

(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-

(MS. MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 28.01.2026.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI