

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA Nos.4408/Del/2019  
Assessment Years: 2013-14

M/s. Unitech reality Pvt. Ltd., 6, Community Centre, Saket, New Delhi	<b>Vs.</b>	DCIT, Circle-27(1), Delhi
<b>PAN: AAACR4290E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**With**

ITA No.4409/Del/2019  
Assessment Years: 2010-11

M/s. Unitech Residential Resorts Ltd., Basement, 6, Community Centre, Saket, Delhi	<b>Vs.</b>	DCIT, Circle-27(1), Delhi
<b>PAN: AAACG2305H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. D.C. Garg, CA
Department by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of hearing	12.02.2026
Date of pronouncement	12.02.2026

**ORDER**

**PER SATBEER SINGH GODARA, JM**

These twin assessees, namely, 'M/s. Unitech Reality Pvt. Ltd.' and 'M/s. Unitech Residential Resorts Ltd.' have filed their as many

appeals ITA Nos.4408 & 4409/Del/2019 for assessment years 2013-14 and 2010-11, against the Commissioner of Income Tax (Appeals) [in short, the “CIT(A)”], New Delhi’s separate orders dated 29.03.2019 and 26.03.2019 passed in case nos. 43/18-19/1071 and 10159/2018-19, involving proceedings under sections 143(3) and 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’), respectively.

Heard both the parties. Case files perused.

2. The former assessee’s appeal ITA No.4408/Del/2019 raises the following substantive grounds:

1. *The order passed by the Learned Commissioner of Income Tax (Appeals)-28 (“Ld. CIT(A)”) under section 250 of the Act is bad in law and on the facts and circumstances of the case, to the extent it has partly dismissed the appeal of the appellant.*
2. *The Ld. CIT(A) has erred in law and on facts and circumstances of the case in upholding the order passed by the Ld. Assessing Officer (“Ld. AO”) thereby upholding the addition of Rs.2,95,40,296/- towards exchange of land.*
3. *Without prejudice, both the lower authorities have gravely erred in not allowing the cost of land purchased to the appellate while making the addition towards the sale of land.”*

3. Both the parties next invite our attention to the learned CIT(A)’s detailed discussion upholding the impugned addition of Rs.2,95,40,296/- on account of under-valuation of sale of land through exchange, reading as under:

“5. The third Group pertains to the addition of Rs.2,95,40,296/- on account of under valuation of sale of land through exchange. During the assessment proceedings, the AO observed as under:-

*“5. Sale of land through exchange:-*

*The assessee company has exchanged its land amounting to Rs.92,72,204/- shown under the head “Finished properties”/goods” in Note no. 11 of the financial statements with another land through Transfer deeds entered on 01.06.2012. However in the books of accounts, the assessee company has not disclosed any value of sale in relation to such exchange. Questionnaire was issued vide letter dated 15.12.2015, to submit details of transaction relating to the land purchase. The assessee vide its letter dated 02.02.2016 has submitted that*

*Further as regards to your query regarding exchange of property, most humbly it is submitted that during the year consideration the assessee company due to some compelling circumstances and business prudence had to exchange some area of properties with the other one having equivalent area in the same vicinity i.e. In the village Badshahapur distt Gurgaon.*

*It would be needless to mention here that since the exchanged properties are in the same vicinity therefore circle rate of the properties are same. Enclosed please find the circle rates in the area in the F.Y 2012-13 relevant for the A/Y 2013-14,*

*Further it would not be out of place to say that since the exchanged properties are in same area as mentioned above, therefore market value of the properties exchanged is also same. This fact is also mentioned in the exchange deed of the properties which are enclosed herewith for your kind perusal.”*

*The submission of the assessee has been considered. The fact of the transaction is that the assessee company has sold its existing land at Badshahapur and purchased another land in the same vicinity on exchange basis after paying the applicable transfer duty as per coples of Transfer deeds submitted. The assessee company is engaged in real estate business and such transfer of land on exchange basis is a normal business prevailing in such industry. Through the transfer deed, the assessee company purchased new land and sold its existing land. However, no sale amount was disclosed by the assessee company in its profit & loss account relating to the sale value of such land. On verification of the*

*transfer deed, it was found that the circle rate of the property is Rs. 3,88,12,500/- [Rs. 3,77,81,250/- +Rs. 10,31,250/- (Rs. 79,68,750/11/859)] as per copies of Transfer Deed submitted by the assessee company vide its letter dated 02.02.2016. In absence of any details of sale value provided by the assessee company, the circle rate of the property in question is considered as the market value and accordingly, Rs. 2,95,40,296/-(Rs. 3,88,12,500 Rs. 92,72,204) is added to the income of the assessee company on account of non-disclosure of sale value of land."*

*5.1 During the appellate proceedings, objecting to the aforesaid addition, appellant has submitted as under: -*

*"Issue 1: Addition of Rs. 2,95,40,296/- on the transaction of exchange of land.*

*It is humbly submitted that the impugned addition of Rs.2,95,40,296/- is not warranted for the following reasons:*

*(a) The appellant had not received any monetary consideration in the transaction of exchange / barter leading to any income chargeable to tax in the hands of the appellant. It is trite that no tax can be levied on notional income.*

*(b) Without prejudice to the aforesaid, it is submitted that even notionally no income would arise in the hands of the appellant as the land was exchanged by the appellant with a land having, same area and being in the same locality having the same circle rate. Thus, there would be no difference in the values of the land leading to any notional income or benefit in the hands of the appellant.*

*(c) Further, even for the purposes of stamp duty, the transaction undertaken by the appellant is not treated as sale, but only exchange of land and hence even stamp duty is not levied on the transaction as separate transactions of sale and purchase; as is erroneously held by the Ld. AD.*

*(d) Without prejudice to to the aforesaid, the Ld. AO has gravely erred in applying the principles of Section 50C of the Act in the present case. Admittedly, the appellant is engaged in the business of real estate transactions and the subject land which has been exchanged by the appellant was also treated as a stock in trade of the appellant. Thus, the Ld. AD could not have applied Section 50C of the Act as the said section is only applicable on capital gains computation and not on business income. The Ld. AO has sought to adopt the value*

*of land exchanged consideration towards the transaction of exchange; which method is provided in used for the stamp duty purposes as Section 50C for the purpose of computation of capital gains.*

*(e) Without prejudice to the aforesaid, it is submitted that the Ld. AO has gravely erred in making the impugned addition summarily without making any enquiries with regard to the actual market price of the land received by the appellant in the barter transaction. It was well within the powers of the Ld. AO to call for sale deeds of similar parcels of land from the adjoining localities to ascertain the actual market value of the land. However, the Ld. AO, without making any such enquiries proceeded with undue haste and based upon whims and fancies in making the impugned addition.*

*(f) Without prejudice to the aforesaid, it is submitted that the exchange of land was done by the parties in light of commercial expediency. Both the parties to the transaction were under distressed circumstances and hence entered into the exchange transaction. It is common knowledge that in distressed sales, the actual price that a property fetches is lower than in ordinary circumstances."*

*5.2 I have considered the facts of the issue and found that appellant was in possession of the land having value of Rs. 92,72,204/- shown under the head "Finished Properties/Goods" which was exchanged with another piece of land through two transfer deeds entered on 01.06.2012 but in its books of account, the assessee company did not disclose any value of sale in relation to such exchange. The reason for doing so, has been explained by assessee that it had not received any monetary consideration in the transactions of exchange leading to any income chargeable to tax in its hands. As per it, there would be no difference in the values of land leading to any notional income or benefit as it is trite law that no tax can be levied on notional income. However, during the appellate proceedings, appellant filed the copies of registered deeds in respect of exchange of properties wherein, as per the first deed dated 01.06.2012 for the land measuring 20 Canal 3 Marla, stamp duty of Rs. 26,44,710 has been paid on the value of the property at Rs. 3,77,81,250/- and as per the second deed of the same date for the remaining land measuring 4 Canal 5 Marla, the stamp duty of Rs. 5,57,830/- has been paid on the value of land amounting to Rs. 79,68,750/-. However, out of this land, only a part of land was transferred by appellant which has been valued at Rs. 10,31,250/- only, being 11/85th part of total land. Thus, as per the aforesaid two sale deeds, the total value of land which has been exchanged by appellant has been determined at Rs. 3,88,12,500/-*

against the value at Rs. 92,72,204/- shown by appellant in its books of account. The claim of appellant that it was only exchange of lands and no consideration was involved and therefore, no notional value can be determined in the case of the aforesaid pieces of land is misplaced and unsustainable. The aforesaid two exchange deeds dated 01.06.2012 clearly show that there was a transfer of land between appellant and other parties namely Shri Mukul Yadav and others and since the appellant is engaged in the real estate business and dealing in properties and earning of profit out of it, the aforesaid transactions of transfer of ownership of lands also result in business transactions and accordingly the fair market value of the land, being business asset, has to be determined on the said date of transfer. However, the fair market value has already been determined by Govt. Authority being Stamp Valuation Officer. Had it been a notional transactions having no financial impact on either purchaser or seller, the land would not have been valued as per the circle rate and appellant would not have paid stamp duty on these transactions. The valuation by Stamp Valuation Authority clearly shows that the fair market value of the land was Rs. 3,77,81,250/- and Rs. 10,31,250/-, as mentioned above, not at Rs. 92,72,204/- as shown by appellant in its books of account. The stand taken by appellant that the value determined by Stamp Valuation Authority is applicable only in the case of capital gains as per provisions of Section 50C of IT Act, is misplaced and untenable as, for business transactions also, on the date of sale/transfer of business asset, being land of any other asset, the fair market value has to be adopted to compute the profits and gains of assessee. Here also, being a real estate developer, the appellant has transferred the pieces of land and the value should have been taken at market rate to compute its business income, which has not been done by it by taking the plea that it was only a notional transaction. In such situation, the AO was justified in holding the transactions as business transactions and taking the value of land at the rate prevalent on the date of transfer as shown in the aforesaid two sale deeds and computing profit accordingly. In view of this, I uphold the conclusion drawn by AO to determine the fair market value of the business assets in the form of land, as above, on the basis of value ascertained by Stamp Valuation Authority on transfer of these business assets.

5.3 The other plea taken by appellant that if the land transferred by it has to be valued at fair market value in view of valuation determined by Stamp Valuation Authority as has been done by AO, on the same analogy, the pieces of land transferred to it by considering its purchases, should also be valued at fair market value by neutralizing the financial impact on these transfers. However, the stand taken by appellant is untenable. Nowhere in the Act, it has been provided that the purchases of business assets has to be valued at fair market value

*for computing the profit. It is always taken at cost price while computing the profit and gain of assessee. Even In section 43(1) of IT Act, where the 'actual cost' has been defined for the sections 28 to 41, it meant the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Thus, as per these legal provisions also, while determining the 'actual cost' of the business asset, fair market value cannot be adopted, rather, it has to be taken the actual amount of the cost which has been paid or borne by assessee. In the case of the appellant, as mentioned by AO in the assessment order, appellant itself has valued the cost of land at Rs. 92,72,204/- which has already been allowed by him while computing the business profit out of transfer of aforesaid pieces of land.*

*5.4 In view of the above, the ground taken by appellant is rejected and the addition of Rs. 2,95,40,296/- made by AO is confirmed.”*

4. Suffice to say, it has come on record that not only the assessee company is engaged in its regular business activity in real estate developer/builder segment but also it had exchanged its land having value amounting to Rs.92,72,204/-; by way of yet another parcel in question having much more valuation (supra), forming subject matter of addition to the tune of Rs.2,95,40,296/- made in the Assessing Officer's assessment order dated 08.03.2016 as upheld in the above extracted CIT(A)'s detailed discussion.

5. That being the case, learned counsel seeks further time to place on record all the details in support of the assessee's stand. There is no reason much less a convincing one as to what stopped the assessee from filing the relevant case records on the preceding 19 hearing occasions. We thus find no merit either in the assessee's

adjournment request or in its sole substantive ground seeking to reverse the impugned addition of Rs.2,95,40,296/- representing profits and gains on account of exchange of land made in both the lower proceedings. Rejected accordingly. This assessee's appeal ITA Nos.4408/Del/2019 is dismissed.

6. Next comes the latter assessee's appeal ITA No.4409/Del/2019 for AY: 2010-11 wherein both the learned lower authorities have held it to have furnished its inaccurate particulars of income(s) to levy section 271(1)(c) penalty in question amounting to Rs. 5,79,31,241/- vide Assessing Officer's order dated 28.03.2018 which stands upheld in the CIT(A)'s detailed discussion.

7. The assessee has first of all raised its legal argument that once the learned Assessing Officer had admittedly issued his penalty show-cause notice(s) u/s 271(1)(c) r.w.s. 274 of the Act dated 14.03.2013, not specifying any specific limb thereunder; and, his failure to this effect vitiates the entire proceedings itself. The Revenue on the other hand has vehemently argued that such a defect is

only a procedural one which is not fatal to the impugned penalty.

8. Faced with this situation, we quote PCIT Vs. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Del.) and PCIT Vs. Gopal Kumar Goyal (2023) 153 taxmann.com 534 (Del.) to conclude that once the learned Assessing Officer had nowhere specified the corresponding limb in his section 271(1)(c) penalty show-cause notice forming part of the case records, his failure to this clinching effect indeed vitiates the penalty proceedings itself. Quashed accordingly. This latter assessee's appeal ITA No. 4409/Del/2019 is allowed.

9. To sum up, the assessee's former appeal ITA No.4408/Del/2019 is dismissed and the latter appeal ITA No.4409/Del/2019 is allowed. A copy of this common order be placed in the respective case files.

***Order pronounced in the open court on 12<sup>th</sup> February, 2026***

***Sd/-***  
**(NAVEEN CHANDRA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 9<sup>th</sup> March, 2026.

*RK/-*

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi