

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.204/Del/2025
[Assessment Year : 2016-17]**

Apace Developers Pvt.Ltd. Flat No.1034, Ground Floor, Kondli Gharol, Mayur Vihar, Phase-III, Delhi-110096 PAN-AAHCA5732D	vs	ITO C.R.Building I.P.Estate Delhi-110002.
APPELLANT		RESPONDENT

**ITA No.856/Del/2025
[Assessment Year : 2016-17]**

ITO C.R.Building I.P.Estate Delhi-110002.	vs	Apace Developers Pvt.Ltd. Flat No.1034, Ground Floor, Kondli Gharol, Mayur Vihar, Phase-III, Delhi-110096 PAN-AAHCA5732D
APPELLANT		RESPONDENT

Appellant by	Shri Akhilesh Kumar, Adv. & Shri Govind Agarwal, CA
Respondent by	Shri Jitender Singh, CIT DR
Date of Hearing	03.02.2026
Date of Pronouncement	01.04.2026

ORDER

PER MANISH AGARWAL, AM :

The captioned cross appeals are filed by the assessee and the Revenue against the order of Commissioner of Income Tax (Appeals) National Faceless Appeals Centre (NFAC), New Delhi [“Id. CIT(A)”]

passed u/s 250 of the Income Tax Act, 1961 (the Act) dated 18.12.2024 arising out of the assessment order passed u/s 143(3) of the Act dated 31.12.2018 for Assessment year 2016-17.

2. Brief facts of the case are that assessee is a company, engaged in the business of civil contractor and e-filed its return of income on 12.05.2017, declaring total income at Rs.12,73,060/-. The case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) was issued on 20.08.2018 followed by notices u/s 142(1) of the Act along with questionnaires from time to time. In response, the assessee filed the replies and after considering the replies filed by the assessee, the assessment order was passed by making various additions / disallowances and the total income of the assessee stood assessed at Rs. 15,05,69,686/-.

3. Against the said order, the assessee filed an appeal before the Id. CIT(A) who partly allowed the appeal of the assessee.

4. Aggrieved by the said order, both the assessee and the revenue have filed the appeals before the Tribunal by taking various grounds of appeal.

5. First, we take assessee's appeal in ITA No. 204/Del/2025.

ITA No. 204/Del/2025 [Assessment Year 2016-17]

(Assessee's Appeal)

6. The **Ground of appeal No.1** is general in nature, needs no adjudication.

7. The **Ground of appeal Nos. 2 & 3** are with respect to action of Ld. CIT(A) in not allowing the carried forward of expenses of Rs. 1,32,34,888/- forming part of the work in progress to next year though the assessee has accepted capitalization of the same into the work in progress.

8. Before us, ld. AR for the assessee submits that during the course of assessment proceedings, due to the ill health of one of the Directors, the relevant details could not be filed however, in remand proceedings, all the details were filed and it was admitted by the assessee that the expenses are not required to be allowed as revenue expenditure since no income was offered on the project on which they were incurred. The assessee claimed that the project was completed less than 25%, therefore, no revenue was recognized, in terms of the guidance note issued by the Institute of Chartered Accountants of India. Ld. AR submits that since these expenses are forming part of the work in progress and therefore, the same deserves to be carried forward to next year. However, the ld. CIT(A) though had accepted assessee's claim of not allowing the same as revenue expenditure but had not allowed the same to be carried forward to next year. He requested that the same be allowed to be carried forward to next year.

9. On the other hand, Ld. CIT DR submits that the assessee has failed to file the details before the year with respect to the expenses claimed, therefore, the same remained unverified on the part of the Assessing Officer. He thus, requested that the action of the lower

authorities in not allowing carried forward of the said expense deserves to be uphold.

10. Heard the parties and perused the material available on record. In the instant case, the assessee has failed to produce bills and vouchers of the expenses claimed on the project on which though no income was offered as the project has not completed up to 25%. However, since these expenses are forming part of the total cost incurred on the said project, it was the claim of the assessee that the same be allowed to be carried forward to next year. The facts remained that in absence of bills and vouchers, verification of these expenses remained pending on the part of the AO. Under these circumstances, we remand this issue to the file of the AO with the direction to verify all the expenses claimed and if the claim of the assessee is found to be in order, carried forward to next year of these expenses be allowed as a part of work in progress. The assessee is also directed to appear before the AO and file all the necessary details to prove the genuineness of the expenses claimed. With these directions, Ground of appeal Nos. 2 & 3 of the assessee are allowed for statistical purposes.

11. **Ground of appeal Nos. 4 to 7** are with respect to the addition of Rs. 10,20,40,816/- made by the AO on account of advances received by the assessee from M/s Boulevard Projects Private Limited against the work undertaken by it which stood upheld by Id. CIT(A).

12. Before us, ld. AR of the assessee submits that assessee has entered into an agreement dated 18.12.2015 for electrical and civil work of various nature of Tower A, Tower B and basement of Delhi One project at Noida from M/s Boulevard Projects Pvt. Ltd. (the principal) having total estimated cost of Rs.120.99 crore. Against the work, it has received mobilization advance of 10% of the total intent amount. The said amount was received in two installments of Rs. 5.00 crores each through RTGS which were credited in the bank account of the assessee on 30/31.12.2015. The principal has also deducted tax at source under section 194C of the Act @ 2.2% on such advances which comes to Rs. 20,40,816/-. Accordingly, total amount including TDS i.e. Rs. 10,20,40,816/- was credited by the assessee under the head "Advance received". The assessee has filed confirmation of the principal, relevant pages of the its bank account, bank account of the party, copy of balance sheet of the principal and confirmation of subsequent years to establish that the advance was received in terms of the contract agreement and the principal has sufficient creditworthiness. As per ld. AR, assessee has discharged its burden of proving the genuineness of transaction and creditworthiness of principal who gave the mobilization advance to the assessee. It is submitted by ld. AR that the lower authorities have disbelieved the advance only for the reason that on the same day, this advance was paid to other company M/s Three C Green Developers Private Limited which happens to be the sister concern of the principal company M/s Boulevard Projects Private Limited and therefore, the lower authorities have alleged that the advance

received by the assessee was not genuine. As per ld. AR for making addition u/s 68 of the Act, assessee has to established the identity, genuineness of transaction and creditworthiness of the lender and nowhere in the Act, it is provided to establish as to how the funds received were utilised. Once the assessee has established the credit worthiness and the identity of the principal from whom the advance was received, no addition could be made u/s 68 of the Act. Ld. AR submits that the AO and the ld. CIT(A) has not doubted the credit worthiness of the principal who has given the advance, therefore, he requested for the deletion of the addition made.

13. On the other hand, the ld. CIT DR submits that the assessee has transferred the advance immediately after receiving the same to one of the groups related to the principal thus, the transaction is doubtful. Ld. CIT DR further submits that the said advance was adjusted in subsequent year in terms of Tri-party agreement executed between the assessee, the principal and M/s Three C Green Developers Pvt. Ltd, to whom the said funds were transferred. This clearly shows the transaction of advance is nothing but mere is a mere book. He therefore, requested for the confirmation of the addition made.

14. Heard the parties and perused the material available on record. It is observed that the assessee has received the advance in two trenches, first is of Rs. 5.00 crore received on 30.12.2015 and another trench of 5.00 crores was received on 31.12.2025. In order

to discharge the burden casted upon it in terms of section 68 of the Act, the assessee has filed all the plausible details like confirmation of the principal, bank statement of the principal, bank statement of the assessee, copies of the final accounts of the principal. By filing these documents, assessee not only succeeded in establishing the identity of the principal and creditworthiness as well as the genuineness of the transaction. It is observed from the orders of the lower authorities that such details were not doubted nor the creditworthiness of the principal was doubted. The addition was made solely for the reason that the amount of advance received was transferred immediately to one of the group companies of the principal, namely M/s Three C Green Developers Private Limited. The claim of the assessee was that this advance was transferred upon the instructions of the principal however, the fact remained that this amount was received by the assessee as mobilization advance against the execution of the work awarded to it.

15. For the purpose of making addition u/s 68 of the Act, the AO should examine the identity of the person who is giving the funds, genuineness of the transaction and the creditworthiness of the party. In the instant case, as observed above, nowhere in the orders of both the lower authorities, it is alleged that the assessee has failed to discharge the burden casted upon it. Ld. CIT(A) also reproduced the remand report wherein the AO has also accepted the fact that assessee has received the advance and filed all the documents regarding the transactions.

16. Under these circumstances, once the assessee has been able to establish the genuineness of the transaction and creditworthiness of the party, no addition could be made u/s 68 of the Act. If there is any doubt with respect to genuineness of the transactions, the AO should have made the inquiries directly by issue summons u/s 133(6) of the Act, as has been held by the Hon'ble Supreme Court in the case of **Orrisa Corporation Pvt. Limited** reported in **159 ITR 78 (SC)** but the AO has failed to make any such inquiry and made the addition. The assessee also placed reliance on the judgment of Hon'ble Delhi High Court in the case of **PCIT Vs. Wel Intertrade Pvt. Ltd** reported **152 taxman.com 663 (Delhi)** wherein the Hon'ble High Court has held that *“when it is also a matter of fact that the mobilization advances received were adjusted, in subsequent years, out of the sale proceeds, therefore, no addition is required to be made and assessee has discharged the primary onus of proving the identity and the capacity of the creditor as well as genuineness of transaction, no addition could be made under section 68 of the Act.”*

17. Regarding the observations of the ld. CIT(A) that no agreement was executed between the parties, at pages 55 to 88 of PB, a copy of agreement dated 18.12.2015 between the assessee and the Principal M/s Boulevard Projects Private Limited is placed, according to which 10% mobilization advance will be paid to the assessee alongwith letter of intent which will be adjusted proportionately from the running bills. It is further observed that later due to certain disputes/ misconduct on the part of the principal, the FIR was lodged and

construction on the project under reference stopped, therefore, the work could not be completed. It is further observed that the advance received was ultimately adjusted in terms of the Tri Party agreement executed wherein the amount was adjusted as book entry and the credit entry was taken over by M/s Three C Green Developers Pvt. Ltd. by way of this Tri-party Settlement Agreement dt. 10.04.2018, placed at pages -136 of PB, the assessee stood discharged from the liability and the amount was taken as liability by the M/s Three C Green Developers Pvt. Ltd.

18. From the perusal of all the facts as discussed above, we find that assessee has been able to discharge its liability of proving the genuineness of the transaction and the creditworthiness of the principal who had given the advance to it. Under these circumstances and by respectfully following the orders of the Hon'ble Supreme Court and of Hon'ble Delhi High Court as stated here in above, in our considered opinion, no addition could be made u/s 68 of the Act for the mobilization advance received in terms of the Agreement dated 18.12.2015. Thus, the addition made is hereby, deleted. The grounds of appeal No. 4 to 7 raised by the assessee are thus, allowed.

19. The **Ground of appeal Nos. 8 and 9** are with respect the non-allowability of credit of the TDS made on the mobilization advances received by the assessee.

20. Heard the parties and perused the material available on record. It is observed that the lower authorities have denied the claim of the assessee as the TDS was deducted on mobilization advances which were not offered as income in the year under appeal. The mobilization also admitted this fact however, stated that the credit of same be allowed when such advances are offered for tax as part of total income in subsequent assessment years. Accordingly, we direct the AO to allow the credit of this TDS to the assessee made on mobilization advance when such mobilization advances would be adjusted against the income by the assessee in any of the subsequent assessment year. With these directions, Ground of appeal Nos. 8 & 9 of the assessee are disposed off.

21. In the result, appeal of the assessee is partly allowed.

22. Now we take appeal of the revenue in ITA No. 856/Del/2025.

ITA No. 856/Del/2025 [Assessment Year 2016-17]

(Revenue's Appeal)

23. **Ground of appeal No.1** of the revenue is with regard to the deletion of addition of Rs. 69,76,177/- made by the AO towards the difference between turnover declared in the return of income and annual VAT return.

24. Heard the parties and perused the material available on record. The AO made the addition as there was a difference in the turnover declared in the annual VAT return and in the turnover declared in

the return of Income filed. It was the claim of the assessee that under VAT Act, gross receipts were to be offered for tax however, since the assessee has followed Percentage of Completion Method, therefore, some of the receipts on which VAT has been paid was not been included in the total turnover, which has resulted into the difference between the turnovers declared. It is observed that Ld. CIT(A) after considering these facts, has deleted the addition made by making following observations:

“The submission of the appellant has been considered. The alternative plea of the appellant is not found to be maintainable in so far as the addition of Rs 1,32,34,888/- is on account of disallowance of expenses claimed. It is not an addition made on account of addition to the gross receipts of the appellant shown in the Income Tax Return. Therefore, both the additions are on different counts and cannot be treated in the nature as argued by the appellant. Coming to the main argument of the appellant, it is seen that the term, "turnover is not defined in the Income tax Act, thereby leading to different interpretations. As per Guidance Note on Terms Used in Financial Statement' published by the ICAI, the meaning of Turnover' shall be the aggregate amount for which sales are affected by an enterprise. The term "turnover" has been understood for the purpose of Section 44AB to mean the aggregate amount for which sales are effected or services rendered by an enterprise. Certain amounts collected will be treated as advances till such amounts are converted into sales depending upon the stage of completion of contract entered between the parties involved and are allowed to be excluded from the figure of turnover. There will be certain adjustments to the gross figure of sales depending upon the method of accounting followed for the statutory levies and certain minor adjustments for discounts given and ancillary sales of scrap, obsolete stock etc. On considering these aspects it is clear that the figure of turnover under the Income Tax Act is entirely related to sales or incomings Under Uttar Pradesh Value Added Tax Act, or supplied or distributed by way of sale by a dealer, either directly or through to sales. However, it is also seen that the appellant has pointed out an exception to this rule by demonstrating that the figure of turnover adopted in the VAT Return was arrived at by increasing the figure of Net purchases by an factor of 20% on the basis of Notification No 2-718/11-4(2) 88-UP-Act 15-48-Order 97 dated 27/02/1997. The method of working the sales turnover as adopted by the AO in appellant's case is found to be contrary to the precedents under Income Tax Act. Further, factually the financial results worked on the basis of books of accounts claimed to be maintained

by the appellant have been accepted by the AO. In this background, there is no justification for replacing the turnover disclosed by way of audited profit & loss account with the turnover disclosed in the VAT return which is worked on the basis of Net Purchases. Hence, the addition of Rs 69,76,177/- is not maintainable. The Ground of Appeal No (05) fails. However, the Ground of Appeal No (04) is allowed.

25. Before us, the Revenue has failed to controvert the finding given by Id. CIT(A) where he has considered the method of accounting employed by the assessee and the turnover declared under VAT Act based on the gross receipts whereas the turnover declared as per ITR is on the basis of Percentage of Completion Method. Under these circumstances, we find the order of Id. CIT(A) is correct and therefore, requires no interference. Accordingly, this Ground of appeal No.1 of the Revenue is dismissed.

26. In **Ground of appeal No.2 & 3**, Revenue has challenged the deletion of addition made u/s 68 of the Act towards the advances received of Rs. 1,40,00,000/- from M/s Royal Hometown Planners Private Limited and of Rs. 1,00,00,000/- from M/s Ellora Infratech Pvt. Ltd.

27. Before us, Ld. CIT DR for the Revenue submits that in the case of M/s Ellora Infratech Pvt. Ltd., the agreement was executed at a later stage however, the assessee has received mobilization advance of Rs. 1.00 crores at an early date and therefore, the same should not be treated as the genuine advance and requested for the restoration of the addition made to this extent. Regarding advance of Rs.1.40 crores from M/s Royal Hometown Planners Private Limited, Ld. CIT

DR placed reliance on the order of the AO and requested for the restoration of the additions made by the AO.

28. Per contra, Ld.AR for the assessee submits that in the case of M/s Royal Hometown Planners Private Limited (the principal), in the remand proceedings, assessee has submitted all the relevant details such as ledger account of the principal, confirmation copy of advance by the principal, relevant pages of bank statements of assessee, bank accounts of the principal, copy of ITR of the principal, copy of the financial statements of the principal and ledger accounts of subsequent years wherein such advances were adjusted against the sales recognized. He, therefore, submits that based on these details submitted by the assessee, Ld. CIT(A) has deleted the addition made. Accordingly, he requested for the confirmation of the order of Ld. CIT(A) deleting the addition made u/s 68 of the Act, towards the advance received from M/s Royal Hometown Planners Private Limited.

29. Regarding advance of INR 1.00 crore from M/s Ellora Infratech Pvt. Ltd.(the principal), Ld.AR submits that though the advance was received prior to the execution of agreement however, to establish the genuineness of the transaction and the creditworthiness of the principal, assessee has filed complete details of the principal such as copy of agreement, confirmation, bank statement of both the parties, ITR and financial statements and ledger account alongwith confirmations of subsequent years where such advance was adjusted

against the invoices raised by the assessee. He thus, submits that the order of Ld. CIT(A) in deleting such addition be upheld.

30. Heard the parties and perused the material available on record. Ld. CIT(A) had appreciated the facts that assessee has filed all the evidences to discharge the burden casted upon it as per section 68 of the Act to prove the genuineness of the transaction and creditworthiness of the parties who give the mobilization advances to the assessee. It is further observed that in the case of advance from M/s Royal Hometown Planners Private Limited, the AO has accepted the genuineness of transaction and creditworthiness in the Remand Report and no adverse inference was drawn by the AO. Ld. CIT(A) after considering these facts, has deleted the addition so made. The relevant findings of Ld. CIT(A) are reproduced as under:

M/s. Royal Hometown Planners Pvt.Ltd.

“The appellant has stated in the rejoinder filed that the AO has accepted the evidences filed in the Remand Report and hence the addition should be deleted. On going through the submissions of the appellant and the remand report, it is seen that the AO has concurred with the contention of the appellant that the advance of Rs 1.48 crores was received by the appellant from M/s Royal Hometown Planners Pvt Ltd. On going through the submission of the appellant and the enclosures it is seen that; the appellant has also submitted copy of agreement dated 26/10/2015 with M/s Royal Hometown Planners Pvt Ltd. On going through the agreement, it can be seen that on Page 45 of the agreement appearing on Page 78 of appellant's submission there is reference to mobilisation advance to be paid on the basis of actual mobilisation done by the appellant. "However, the amount of advance is not specifically mentioned. On going through the other documents submitted, it is seen that ledger extract in the books of the lender is unsigned and cannot be treated as confirmation of transaction. The payments to the appellant are found to have been paid through bank Accounts of the of the lender. The appellant has also furnished copy of financial statements of M/s Royal Hometown Planners Pvt Ltd for the relevant period. It is seen that said concern has paid up

share capital and accumulated reserves of Rs 4,31,80,040/- & Rs 1,92,93,834/- respectively. On going through the asset side of the appellant, it is seen that Short Term Loans & Advances given are Rs 8,73,08,689/- and the said grouping includes advance to creditors of Rs 1,92,93,834/-. The AO has confirmed that the funds of Rs 1.48 crores were received from the bank account of the lender. The Balance Sheet of M/s Royal Hometown Planners Pvt Ltd proves its creditworthiness to make advance of Rs 1.48 crores and the copy of agreement proves the genuineness of the transaction. As such, the addition of advance received from M/s Royal Hometown Planners Pvt Ltd stands explained and the addition of advance to the income, within the aggregate amount of Rs 12,60,40,816/- stands deleted.”

31. With respect to the advance of Rs. 1.00 crores received from M/s Ellora Infratech Pvt. Ltd., assessee has filed all the relevant details to discharge burden casted upon it u/s 68 of the Act to establish the identity and creditworthiness of the principal giving the advance. It is a matter of fact that this advance was adjusted against the invoices raised by the assessee in subsequent Assessment years. The Hon'ble Allahabad High Court in the case of **Vithal Das Modi** reported in [2005] **266 ITR 517 (All.)** has held as under:-

“We have heard Shri Shambhu Chopra, learned standing counsel for the Revenue, and Shri Shakeel Ahmed, learned counsel appearing for the respondent-assessee.

From a perusal of the order of the Tribunal, we find that the Tribunal has held that the deposits in question were deposits and not an income of the respondent-assessee. It was in the nature of security deposit which has been fully explained and, therefore, it should not have been added. From the findings recorded by the Tribunal, we are of the considered opinion that the provision of section 68 of the Act was not applicable in the present case.

Consequently, we answer the question of law referred to us in the affirmative, ie, in favour of the assessee and against the Revenue.”

32. Ld. CIT(A) by appreciating these facts, has deleted the addition made by AO by making following observations:-

M/s. Ellora Infratech Pvt.Ltd.

“The contentions of the AO and that of the appellant have been considered. The appellant has produced the Income Tax return, financial statements and agreement for the contract. There are no adverse observations against any of the said documents by the AO. The only reservation of the AO is the receipt of advance before the agreement. Apparently, the advance was received in FY 2015-16 and the agreement was entered into in FY 2016-17. It is seen from the Balance Sheet of Ellora Infratech submitted by the appellant, that advance of Rs 1 crore to the appellant appears in the Balance Sheet under the groupings advance to suppliers. The AO has confirmed that payment was received by appellant from the bank account of Ellora Infratech Pvt.Ltd. On going through the Balance Sheet of Ellora Infratech Pvt Ltd, it is seen that the Paid Up, Share Capital is Rs 271,00,000/-, The accumulated profits is loss of Rs 49.08 lakhs Hence the appears to have appellant of Rs 1.0 crores. The only issue which arises is the observation of AO that payment of advance precedes the signing of agreement between the contractor i.e. appellant and contractee. This discrepancy is a minor discrepancy in light of the documents submitted that the contract was completed and in AY 2017-18. This clearly takes the advance in the ambit of business receipts. The receipt of the advance through banking channels and confirmation of the account by Ellora Infratech Pvt Ltd renders the addition untenable. Therefore, in the background of substantiation of the identity & creditworthiness of Ellora Infratech Pvt Ltd and genuineness of transaction by way of the agreement and sample RA Bills produced. Hence, the addition of Rs 1.0 crore u/s 68 of the IT Act stands deleted.”

33. After perusing the observations of Ld. CIT(A) and considering the overall facts, more particularly, looking to the fact that these advances stood adjusted against the revenue offered in subsequent AYs therefore, there is no element of any undisclosed income of the assessee and accordingly, we find no error in the order of Ld. CIT(A) in deleting the additions made which order is hereby, upheld. The Grounds of appeal Nos. 2 & 3 raised by the Revenue are thus, dismissed.

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

35. In the final result, appeal of the assessee in **ITA No.204/Del/2025 [Assessment Year 2016-17]** is partly allowed and appeal of the Revenue in **ITA No.856/Del/2025 [Assessment Year 2016-17]** is dismissed.

Order pronounced in the open Court on 01.04.2026.

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(MANISH AGARWAL)
ACCOUNTANT MEMBER**

Date:-01.04.2026

Amit Kumar, Sr.P.S

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