

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

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3584/DEL/2023
(Assessment Year: 2017-18)**

ACIT, Circle 1 (1),
New Delhi.

vs.

Ardee Infrastructure Pvt. Ltd.,
16th Floor, Dr. Gopal Das Bhawan,
Barakhamba Road,
Connaught Place,
New Delhi – 110 001.

(PAN : AAACA7927K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
Shri V. Rajkumar, Advocate
REVENUE BY : Ms. Amisha Gupt, CIT DR

Date of Hearing : 11.07.2024
Date of Order : 06.09.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

The assessee has filed appeal against the order of the Learned Commissioner of Income Tax (Appeals), Delhi ["Ld. CIT(A)", for short]/National Faceless Appeal Centre (NFAC) dated 28.07.2023 for the Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeal :-

"1. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.1,80,39,139/- made on account of EDC

(External Development Charges) paid to HUDA without appreciating the facts that preparation of statement of profit and loss in the provisions of Schedule III to the Companies Act, 2013 is not as per the accounting norms as laid down.

2. On the facts and in the circumstances of the case, the Ld. CIT (A) is not justifying the directing the Assessing Officer to apply provision of Section 43CA of the Act for two flats only (i.e. flat no.B5 304 and AI 801) without appreciating the facts that during the assessment proceedings, even after repeated opportunities, the assessee has failed to produce the supporting documents and justification.

3. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.7,0027,585/- without appreciating the facts that during the assessment proceedings, even after repeated opportunities, the assessee has failed to produce the supporting documents and justification.”

3. Brief facts of the case relating to the three grounds being common for a decision in the appeal are that the assessee company is engaged in the business of real estate development. During the year under consideration, it was continued to run the construction project in collaboration with M/s Gopal Das Estates and Housing P. Ltd. and M/s Ardee Mechanical Industries Delhi P. Ltd. The project for development is located in Ardee City at Gurugram. All the parties, namely, M/s Gopal Das Estates and Housing P. Ltd. and M/s Ardee Mechanical Industries Delhi P. Ltd. had pooled their land for the purpose with the understanding that the profit sharing ratio would be as under:-

i.	M/s Gopal Das Estates and Housing P. Ltd.	84.32%
ii.	M/s Ardee Mechanical Industries Delhi P. Ltd.	7.89%
iii.	M/s Ardee Infrastructure P. Ltd.	7.79%

4. In the pursuit of above collaboration, the assessee entered into a Secondary Agreement on 17.05.2006 with M/s R.D. Varma & Co. P. Ltd. for the construction of flats known as Palm Grove Heights in Gurugram. As per

this Secondary Agreement, 85% of the sales proceeds were earmarked for the developer and the remaining 15% was to be shared by the assessee with M/s Gopal Das Estates and Housing P. Ltd. and M/s Ardee Mechanical Industries Delhi P. Ltd. The Development Agreement also envisaged that the assessee to be the sole marketing agent for the 15% of the constructed space belonging to the share of the three land owning companies for which a further 5% marketing service charges was to be charged. Additionally, as per Clause 22 of the Development Agreement, the External Development Charges (EDC) paid to the Haryana Urban Development Authority (HUDA) would be collected from the prospective/ space/ units / flats buyers @ Rs.85/- per sq.ft. and the same would be passed on to the assessee. The Development Agreement dated 17.05.2006 vide Clause 22 provided for such EDC recovering read as under:-

"The sector road and other external common facilities shall be provided by the Owners (as per this agreement assessee is defined as owner) at its own cost and expenses. However, the external development charges will have to be collected from the prospective space/units/flats buyers @ Rs. 85/- per sq.ft. and the same shall be passed on to the owners."

5. As to the first ground, during the course of the assessment proceedings, the AO went through the details of the treatment of EDC in the accounts of the assessee and being of the opinion that the same was misreported for income purposes in the accounts brought to tax a sum of Rs.1,80,39,139/- pertaining to this issue with the following observations:-

"This working of WIP and change therein during the year is outside the Profit & Loss account and therefore neither the receipt of EDC nor payment thereof is

reflected in the trading account. However, the terms of the Development Agreement show that the assessee is authorised to collect EDC @ Rs. 85 per square feet from all the flat buyers whether the sale thereof falls in its own account or in the account of the developer. Therefore the receipt of this EDC charges from flat buyers should have been made part of assessee's turnover and claimed as expense on payment. Instead the assessee is taking the EDC receipt to WIP directly without routing it through its profit and loss account. This is not as per the accounting norms as laid down for preparation of statement of profit and loss in the provisions of Schedule III to the Companies Act, 2013. This is more so when there is nothing on record to suggest as for how Rs. 85 per sq.ft. are being charged as EDC whereas the assessee must have paid the EDC at some per acre rate of land under development. In its reply the assessee has stated that it has received a sum of Rs,4, 35,75,250/- from various flat buyers and out of this amount of RS. 2,55,36,111/- has been paid to HUDA and balance amount of Rs. 1,80,39,139/- has been booked as expenditure. A glance at the table of work in progress would show that this amount of Rs. 1,80,39,139/- has not lead to any increase in the value of WIP and on the contrary the value of WIP as on 01.04.2016 at RS. 85,58,9 1,624/- has been brought down to Rs. 81,78,52,485/-. Thus the Unpaid receipt of Rs. 1,80, 39, 139/- instead of being shown as revenue in the profit and loss account has been reduced from the value of WIP. As stated above this is against the established accounting consequence as well as provisions of the income tax law. Therefore the amount of Rs. 1,80,39, 139/- is added to the turnover and returned income of the year. I am satisfied that assessee has misreported its income and therefore penalty proceedings u/s 270A of the Income Tax Act are hereby initiated for under-reporting of income which is in consequence of misreporting thereof.

(Addition: Rs. 1,80,39,139/-) "

6. Aggrieved with the above order, in appeal, it was explained to the Id. CIT (A) that the Development Agreement has been misread and misconstrued by the AO. The AO failed to appreciate that the project was an ongoing one and that the final balance in the EDC account if any, be it positive or negative, would be accounted for at the time of the closure of the accounts of the entire project. It was also submitted that the method of accounting of EDC in the WIP Account was consistent and conformed to that adopted in the AYs 2013-14, 2014-15, 2015-16 and 2016-17. The method as pursued in the current year had met with Departmental approval in the cited previous years. It was also submitted that the

Company's books of accounts were being duly audited as per the applicable law and the auditor has not pointed out any discrepancy with regard to the accounting policy or principles pursued by the assessee. Evidence regarding the EDC levied by the Haryana Government was placed on record and was duly explained. It was urged that the same was paid to HUDA for the provision, construction and commissioning of sewerage facilities, roads, electric works, laying of water pipes and other related civil works. The EDC was recovered from the flat buyers invariably as per Agreement with them at a predetermined rate. The EDC paid this year to the Haryana Urban Development Authority and was accounted in the WIP. The quantum of EDC recovered from the flats buyers was credited to the WIP on the sale of flats. The EDC paid to HUDA continuously during the execution of the project and would terminate only after the construction of all the flats in the entire complex on the land was completed. It was further shown to the AO that the treatment in the accounts of the EDC was in total conformity with the guidance notice issued by the ICAI in this regard. Reference was invited to the observations in this context contained on page 524 of the Compendium of Guidance Notes dealing with the treatment of expenditure during the construction period issued by the ICAI.

7. After considering the above submissions, the Id. CIT (A) after going through the order of the AO and the submissions of the assessee, deleted the addition of Rs.1,80,39,139/- made on this count by the AO in assessment order.

8. Aggrieved, the revenue is in appeal before us.

9. At the time of hearing, ld. DR submitted that the assessee is in business of real estate and joint owner of the project sharing the profit at the ratio of 85:15. He submitted that the assessee has collected EDC as per the agreement from the flat owners and charged directly to the WIP account without routing thru the profit and loss account. He submitted and relied on the orders of AO and also relied on the decision of Vipul Ltd, (2022) 197 ITD 556 and Greater Mohali Area Development Authority (P&H) (2018) 93 taxmann.com 441. He submitted that in the above cases, similar issue of EDC was decided in favour of the revenue.

10. On the other hand, ld AR submitted that having been done after a rational and pragmatic consideration of the facts of the case, ld. CIT (A) order on this issue qualifies conformation by the Hon'ble Tribunal. He objected to the submissions of the ld DR and submitted that during the hearing the Ld. CIT-DR has relied upon the ratio of the decision of the Punjab & Haryana High Court in Greater Mohali Area Development Authority vs. DCIT (2018) 93 Taxmann.com 441 (P&H) to support the stance of the AO. That case as cited is totally distinguishable, in as much as, the project in question in that case was not ongoing at the relevant time but had been closed and wound up by that time. It was, therefore, necessary for the Greater Mohali Area Development Authority to have reported the income or loss on account of EDC remaining in the account

at the time of closure of the project. In such circumstances, the Hon'ble High Court found that the AO in assessment ought to have considered the fate of that account and since there was no proper disclosure of material facts in the original orders the reassessment proceedings as instituted in that case had to be upheld. Facts in the case of the Respondent-Assessee are completely different and distinguishable in so far as the project undertaken by the assessee was admittedly ongoing and that it was yet to be wound up so as to make it imperative for accounting the residual amount standing in the EDC.

11. Further, He submitted that the Ld. CIT-DR has also cited another decision of the Delhi Tribunal in Vipul Ltd. vs. DCIT (2022) 197 ITD 556. The question in the cited case was whether EDC would attract the provisions of Sec.43B of the Income-tax Act (the Act). The Hon'ble Tribunal held that the provisions of Sec.43B of the Act are not applicable to EDC. That is not the question in the present case. The cited case has thus no relevance.

12. Considered the rival submissions and material placed on record. We observe from the facts on record that the assessee a joint partner in the development of real estate, as per the agreement, collected EDC charges from the owners of the flats and treated the above charges as advance for execution of common facilities like, construction and commissioning of sewerage facilities, roads, electric works, laying of water pipes and other related civil works. Charged the same to the WIP and relevant payments made to HUDA were

charged to the WIP account. From the submissions, we observe that the EDC is nothing but an advance collected to provide common facilities and other services to the prospective flat owners and such provision of services are reimbursable, the same was collected in advance. As and when it is executed, the same are charged to the WIP. Since the project under consideration is not yet completed, the collected advance cannot be charged to profit and loss account. Further, the assessee has collected the same for providing the common services on the approval of HUDA, this is only on the basis of reimbursement and there is no profit element. Therefore, it cannot be form part of Profit and loss Account. Therefore, the findings of Id CIT(A) are just and proper. Therefore, the case law relied by the Id DR also distinguishable. Hence, the grounds raised by the revenue are dismissed.

13. With regard to the second ground as raised in this appeal is with reference to the deletion of the addition made u/s. 43CA of the Act in a sum of Rs. 6,29,30,146/-, the relevant facts are, AO observed that the sales of 136 flats in the complex were made at rates below the circle rate and, therefore, the difference between the actual sale consideration and the circle rate in a sum of Rs. 6,29,30,146/- had to be brought to tax as unaccounted income of the Assessee. The findings and observations of the AO in this regard are at pages 6 to 16 of the assessment order in para 5.2 therein. The circle rate chart was not readily available during the course of assessment proceedings with the assessee

and the assessment which were to get time barred on 31.12.2019. The assessment was completed with the available information. Since, this could be obtained only subsequently. The same was submitted before Id CIT(A), when those rates were compared with the actual sale consideration received from the several flat buyers, it was found that there existed a difference only with regard to Flat Nos. B4-304 and A1-801 at Serial nos. 24 and 57 of the table drawn by the AO in the assessment order. After considering the above, Id CIT(A) has directed the AO to restrict the addition relating to Flat Nos. B4-304 and A1-801 at Serial nos. 19 and 57 of the table

14. Aggrieved, the revenue in appeal before us.

15. At the time of hearing, Id DR submitted that the information of circle rates were not available with the AO. These are relating to additional evidences submitted before CIT(A) and submitted that this issue may be sent back to AO for verification.

16. On the other hand, Id AR submitted that the AO wrongly added the total sum of Rs. 6,29,30,146/- pertaining to all the flats in the hands of the assessee even though variation was in respect of two flats stated supra and further the share of the Respondent-Assessee in the whole transaction was restricted to 7.79% only of the 15% share of the sale proceeds as per the agreement with M/s R.D. Varma & Co.

17. Further he submitted that during the appellate proceedings the assessee secured and filed before the Id. CIT (A) the circular of the said Authority where the circle rates for FYs 2004-07 to 2006-07. Based on that the differences, if any, between the sale consideration collected from the flats buyers and the registration amount as fixed by the said Authority notified in the circulars, it was found that the differences were there only with regard to two flats of Serial nos. 24 and 57 of the assessment order being Flat No. B5-304 and A1-801. The NFAC has exercised co-terminus powers for assessment and after a critical examination of the facts and figures directed the deletion of the addition and only partly allowed the ground with the following observations at pages 39 and 40 of the impugned order:-

"In view of this the Ground of Appeal is partly allowed and the A.O. is directed to apply provision of Section 43CA of IT ACT 1961 for flat no. B5-304 and A1-801 (appearing in Assessment order in serial number 24 & 57). It is also reiterated that while disallowing the amount the assessee share in the profit sharing ratio should be taken into consideration. Grounds raised by the appellant regarding this issue are partly allowed."

18. He submitted that the matter was remitted to the AO for verification and orders. No error in that direction of the NFAC being perceptible the order as passed in this behalf by NFAC merits to be confirmed. The Ld. CT-DR had however argued that this issue ought to be verified by the AO. It is submitted that since the NFAC had remitted the matter to the AO for the correct determination of the addition and that the AO verified the fact while granting appeal effect the issue on merits to be given a quietus.

19. Considered the rival submissions and material placed on record. We observe that the circle rate for the project of the assessee was not available at the time of completion of the assessment order and it was made available only during the appellate proceedings. The same was submitted before Id CIT(A) and Id CIT(A) having co terminus power, could have remitted the issue back to AO for verification or he can take call to complete the assessment by himself. He chose to complete the same after due verification. After considering the facts on record, we do not see any reason to remit the issue once again back to the file of AO, since the Id CIT(A) has remitted the issue back to AO for giving effect after due verification of the facts on record. The AO may verify the information submitted by the assessee and pass the relevant order on giving effect to the order of Id CIT(A). In our view, there is no need to remit this issue once again to the AO. Accordingly, the grounds raised by the revenue are dismissed.

20. With regard to Ground No. 3 is reference to the PAN Numbers of certain flats buyers not having been provided and for that lapse, an addition during assessment was made of Rs. 7,00,27,585/-, the relevant facts are on pages 15 and 16 of the assessment order in para 5.3. The AO found that fourteen parties named in the assessment order, bought the flats for an aggregate sum of Rs. 7,00,27,585/-, had failed to provide any justification for not adducing their PAN numbers. The AO opined that the sale figure remained unexplained due to the mandatory TDS not having been discharged. The AO added that the

creditworthiness, genuineness and identification were missing which would result in an addition of Rs. 7,00,27,585/-.

21. Aggrieved, the assessee preferred an appeal before Id CIT(A) and filed a detailed submissions before him. It was submitted that Sec.68 of the Act could not be invoked for not mentioning the PAN numbers. It was further submitted that before the AO the evidence of PAN with regard to the fourteen flats buyers named in the assessment order had indeed been filed twice over which he had not considered the same and ignored. It was further submitted that the aggregate amount could not be added in the hands of the Assessee in view of its having only 7.79% share in the total 15% sale value of the flats.

22. After considering the submissions of the assessee, Id CIT(A) after verification of the material on record directed to delete the addition proposed by the AO in assessment order.

23. Aggrieved, the revenue is in appeal.

24. At the time of hearing, Id DR heavily relied on the findings of AO.

25. On the other hand, Id AR submitted that the addition as made by the AO was ex facie erroneous and unwarranted. It was made due to non- application of mind. The deletion of the same by the NFAC is fit and proper and so that order may please be conformed while rejecting the ground raised in this behalf.

26. Considered the rival submissions and material available on record. We observe that the AO made the addition by observing that the assessee has not

provided the PAN details of the buyers of 14 flats. Mere non submission of the PAN details will not lead to disallowance u/s 68 of the Act. The Id CIT(A) has considered the relevant facts on record and deleted the addition, since the assessee had already brought on record the relevant details before AO as well as CIT(A). Therefore, we do not see any reason to disturb the findings of Id CIT(A) and accordingly, the ground raised by the revenue is dismissed.

27. Ground No. 4 is general in nature and requires no specific comments.

28. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 6TH day of September, 2024.

SD/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

SD/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 06.09.2024
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI