

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

I.T.A. No. 262/AGRA/2016 (A.Y 2012-13)

The Assistant Commissioner of Income Tax, Circle-2(1), Agra (APPELLANT)	Vs	Global Heritage venture Ltd. 6-C,Gulmohar, 6C Middletown Street, Ward-63, Kolkata, West Bengal Or 12, Ring Road, Lajpat Nagar- IV, New Delhi-110024 AACCK9842M (RESPONDENT)
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AND

I.T.A. No. 387/AGRA/2017 (A.Y 2013-14)

The Assistant Commissioner of Income Tax, Circle-2(1), Agra (APPELLANT)	Vs	M/s Global Heritage venture Ltd. 12, Ring Road, Lajpat Nagar- IV, New Delhi AACCK9842M (RESPONDENT)
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Appellant by	Ms. Sunita Singh, CIT DR
Respondent by	Sh. Sudesh Garg, Adv

Date of Hearing	06.09.2021
Date of Pronouncement	01.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the Revenue against order dated 31.05.2016 passed by CIT(A)-23, New Delhi for Assessment Year 2012-13 and

order dated 30.05.2017 passed by CIT(A)-24, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

I.T.A. No. 262/AGRA/2016 (A.Y 2012-13)

1. That the Id. CIT (A) has erred in law and on facts in deleting the addition of Rs. 1,54,29,06,058/- made by AO treating the capital asset as stock in trade without appreciating the fact that the assessee is a real estate company and no addition in WIP was made during the year. The AO has rightly worked out the business profit on this transaction treating the same as stock in trade.

2. That the of Ld. CIT (A)-II, Agra, has erred in law and on facts in deleting the addition of Rs. 8,57,25,871/- made by AO, ignoring the fact that the assessee has shown interest of Rs. 8,57,25,871/- in the cash flow statement whereas in the P & L account only Rs. 38,31,079/- has been shown. The AO has rightly added the interest amount in the income of the assessee as share of the disputed parties in the interest will arise only.

3. That the order of Ld. Commissioner of Income Tax (Appeals) being erroneous in law and on facts deserves to be quashed and that of the Assessing Officer deserves to be restored.”

I.T.A. No. 387/AGRA/2017 (A.Y 2013-14)

1. That the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.16,15,54,801/- made by AO, ignoring the fact that the assessee has shown interest on FDR of Rs.1,21,74,561/- only whereas the interest of Rs.16,15,54,801/- received on FDR with PNB has not been shown. The AO has rightly added the interest amount in the income of the assessee as share of the disputed parties in the interest will arise only after payment of due taxes.

2. That the order of Ld. Commissioner of Income Tax (Appeals) being

erroneous in law and on facts deserves to be quashed and that of the Assessing Officer deserves to be restored.”

3. Firstly, we are taking up the appeal for A.Y. 2012-13. The assessee filed return of income for Assessment Year 2012-13 on 31/3/2014 declaring the total income of Rs. 38,31,080/-. The original assessment was framed u/s 143(3) of the Income Tax Act vide order dated 27/3/2015 thereby assessing total income at Rs.121,70,39,930/-

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) allowed the appeal of the assessee.

5. As regards to Ground No.1, the Ld. DR submitted that the CIT(A) was not right in deleting the addition of Rs. 154,29,06,058/-made by the Assessing Officer treating the capital asset as stock in trade without appreciating the fact that the assessee is a real estate company and no addition in WIP was made during the year. The Ld. DR submitted that the Assessing Officer has rightly worked out the business profit on this transaction treating the same as stock in trade.

6. The Ld. AR relied upon the decision of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. The CIT(A) has given a clear finding that the construction of hotel as capital work in progress was accepted by the Revenue for Assessment Year made u/s 153C read with Section 143(3) of the Act for Assessment Year 2007-08 to 2009-10 as well as for Assessment Year 2010-11 and 2011-12. Thus, the continuous stand of the revenue was these are work in progress treated to be as capital asset and not as stock-in- trade. The transfer of the hotel on sale cannot be termed as short term capital gain or

even business income and thus, the assessee has rightly computed the same as long term capital gain on sale which was reflected in profit and loss account and was subsequently also done. Thus, the deletion of the addition by the CIT(A) was right and there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 1 of Revenue's appeal is dismissed.

8. As regards Ground No. 2, the Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs.8,57,25,871/- ignoring the fact that the assessee has shown interest of Rs. 8,57,25,871/- in the cash flow statement whereas in the profit and loss account only Rs.38,31,079/- has been shown. The Ld. DR submitted that the Assessing Officer has rightly added the interest account in the income of the assessee as share of the disputes parties in the interest.

9. The Ld. AR relied upon the order of the CIT(A).

10. We have heard both the parties and perused the material available on record. The interest income on fixed deposit in respect of arbitration proceeding and the same cannot be taxable during the year under consideration as the year of taxability of the same was contingent upon the final decision of the arbitrary Tribunal. During the course of hearing, the Ld. AR submitted that in subsequent year the interest was offered to tax by the assessee. Therefore, the CIT(A) has rightly deleted the said addition and there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 2 of the Revenue's appeal is dismissed.

11. Hence, appeal being ITA No. 262/Agra/2016 for A.Y. 2012-13 filed by the Revenue is dismissed.

12. As relates to appeal being ITA No.387/Agra/2017 for Assessment Year 2013-14, there is only one issue regarding the interest which is identical to

Ground No. 2 of the appeal filed by the Revenue for Assessment Year 2012-13 and the aforesaid findings will be applicable in this year. No distinguishing fact were pointed out by the Ld. DR, hence, ITA No. 387/Agra/2017 is dismissed.

13. In result, both the appeal of the Revenue are dismissed.

Order pronounced in the Open Court on this 01st Day of October, 2021

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 01/10/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

