

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "B" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B" CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 982/CHD/2019

निर्धारणवर्ष / Assessment Year : 2015-16

M/s Ropar Properties and Builders Pvt. Ltd., SCO 12-16, Sunny Enclave, Ropar.	बनाम	Income Tax Officer, Ward-2(2), Ropar.
स्थायीलेखासं./PAN NO: AAACR6395N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितीकीओरसे/Assessee by : Shri Parikshit Aggarwal, CA
राजस्वकीओरसे/ Revenue by : Shri Ashok Khanna, Addl.CIT

सुनवाईकीतारीख/Date of Hearing : 04.03.2021
उदघोषणाकीतारीख/Date of Pronouncement : 24.05.2021

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.04.2019 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT(A)'].

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

" 1. That on the facts, circumstances and legal position of the case, the Worthy CIT(A) in Appeal No. 10519/17-18 has erred in passing that

order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.

2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in converting the impugned assessment from limited scrutiny to complete scrutiny even when there did not exist circumstances justifying the said conversion and also there was no incriminating or credible material in the hands of the Ld. AO which justified the above referred conversion and therefore the impugned assessment deserve to be quashed.

3. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in disallowing expenses of Rs. 4,63,553/- out of the total addition of Rs. 15,45,176/- u/s 40(a)(ia) on account of alleged non deduction of TDS on the expenses claimed even when the payments made to various parties were below the threshold limit for deducting TDS and the appellant was not compulsorily required to deduct TDS on the same.

4. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in disallowing expenses of Rs. 11,11,174/- out of the total addition of Rs. 3,70,579/- u/s 40(a)(ia) on account of alleged non deduction of TDS on the advertisement expenditure claimed by the appellant.

5. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of Ld. AO in making disallowance of Rs. 1,80,190/- on account of claim of expenses towards donation in the group "Development Expenses Govind Valley"

6. That on law, facts and circumstances of the case, the worthy CIT(A) has erred in confirming the action of Ld. AO in making addition of Rs. 5,00,000/- on adhoc basis by disallowing certain development expenses claimed by the appellant on account of non furnishing of cash bill vouchers as per ledgers even when the copies of ledger account of various development expenses along with the cash vouchers were duly produced and verified by the Ld. AO.

7. That the appellant craves leave for any addition, deletion or amendment in the ground of appeal on or before the disposal of the same."

2. At the outset, the ld. counsel for the assessee inviting our attention to the impugned assessment order has submitted that the Assessing Officer (in short 'AO') was directed to carry on limited scrutiny in respect of real estate business of the assessee

with high closing stock. Ld. counsel has further submitted that in respect of the above limited issue, no addition has been made by the AO. However, the AO converted the limited scrutiny into the full scrutiny assessment and made certain disallowance on account of disallowance of expenditure on estimation basis in respect of following items :

Particulars	Amount (in Rs.)
i. Various Expenses	15,45,176/-
ii. Advertisement expenses	3,70,579/-
iii. TDS Penalty	3,51,836/-
iv. Donation	1,80,190/-
v. Donation	6,000/-
vi. Development Expenses	5,00,000/-
TOTAL	29,53,781/

3. The ld. counsel for the assessee has submitted that the AO did not have any reliable and cogent reason to convert the limited scrutiny assessment into full scrutiny assessment. That he has just made certain disallowances on adhoc basis out of routine expenditure of the assessee as listed above.

4. The ld. counsel for the assessee has further invited our attention to the instruction of the CBDT instruction No. 5/2016 dated 14.07.2016 the relevant part of which is reproduced as under :

" In order to ensure that maximum objectivity is maintained in converting a case falling under 'Limited Scrutiny' into a 'Complete Scrutiny' case, the matter has been further examined and in partial modification to Para 3(d) of the earlier order dated 29.12.2015, Board hereby lays down that while proposing to take up 'Complete Scrutiny' in a case which was originally earmarked for 'Limited Scrutiny', the Assessing Officer ('AO') shall be required to form a reasonable view that there is possibility of under assessment of

income if the case is not examined under 'Complete Scrutiny'. In this regard, the monetary limits and requirement of administrative approval from Pr. CIT/CIT/Pr. DIT/DIT, as prescribed in Para 3(d) of earlier Instruction dated 29.12.2015, shall continue to remain applicable.

Further, while forming the reasonable view, the Assessing Officer would ensure that:

a. there exists credible material or information available on record for forming such view;

b. this reasonable view should not be based on mere suspicion, conjecture or unreliable source; and

c. there must be a direct nexus between the available material and formation of such view."

5. A perusal of the above instruction of the CBDT shows that to convert the limited scrutiny into complete scrutiny, the Assessing Officer shall be required to form a reasonable view that there is a possibility of under statement of income and that view should be based on credible material or information available on record and such a view should not be based on mere suspicion, conjecture or unreliable resources and there should be a direct nexus between available material and formation of view. However, the above conditions are not fulfilled in this case. The AO has not referred to any credible or reliable material or information to form the view that there was a possibility of under assessment of income in this case. The AO has merely made certain disallowance on adhoc basis without pointing out any information or material available to him which has a direct nexus to show that there was possibility of under assessment of income.

6. In view of this, conversion of limited scrutiny into complete scrutiny is against the spirit of CBDT mandate which is binding on the AO. Therefore, the conversion of limited scrutiny into complete scrutiny being not valid, the consequential additions made by the AO on adhoc basis and further confirmed by the CIT(A) are not sustainable in the eyes of law. Same are ordered to be deleted.

In the result, appeal of the assessee stands allowed.

Order pronounced on 24.05. 2021.

Sd/-

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

(संजय गर्ग)
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File