

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member and
Dr. B. R. R. Kumar, Accountant Member

ITA No. 2592/Del/2014
(Assessment Year: 2011-12)
Gardenia Aims Developers Pvt. Ltd, Vs. DCIT,
Plot No. GH-1, Sector-46, Noida, Central Circle-7,
UP-201301 New Delhi
(Appellant) (Respondent)
PAN: AADCG5568K

ITA No. 2623/Del/2014
(Assessment Year: 2011-12)

DCIT, Central Circle-7, New Delhi (Appellant) PAN: AADCG5568K	Vs. Gardenia Aims Developers Pvt. Ltd, Plot No. GH-1, Sector-46, Noida, UP- 201301 (Respondent)
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Assessee by :	None
Revenue by:	Shri Kanav Bali, Sr. DR
Date of Hearing	19/05/2023
Date of pronouncement	16/06/2023

ORDER

PER C. M. GARG, J. M.:

1. These are the appeals filed by the assessee and the revenue against the order of the Id CIT(A)-1, New Delhi dated 17.02.2014 for AY 2011-12.

Assessee appeal ITA 2592/Del/2014 for AY 2011-12

2. The grounds raised by the assessee reads as follows:-

“1. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs.38,78,388/- as income from other sources. On the facts and circumstances of case and in law, the addition of Rs.38,78,388/- made by the assessing officer is erroneous and CIT(A) should have deleted the same.

2. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs.1,50.49,000/- on protective basis. On the

facts and circumstances of case and in law, the CIT(A) should not have upheld the addition of Rs.1,50,49,000/- even on protective basis. 73. On the facts and circumstances of case and in law, the addition of Rs.1,50,49,000 upheld by CIT(A) on protective basis is erroneous and the same is liable to be deleted.

4. On the facts and circumstances of case and in law, the assessment order passed by the assessing officer u/s 143(3) rw.s. 153A is illegal and without jurisdiction and Commissioner of Income Tax (Appeal) should have held so.”

3. The grounds of appeal raised by the revenue are as under:-

“1. The order of Ld. CIT (A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.38,78,388/- made by AO u/s 69 of the I.T. Act.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 5,57,50,000/- made by AO on account of "unexplained expenditure".

4. On the facts and circumstances of the cases the Ld. CIT(A) has erred in directing the AO to cancel the reduction in closing work-in-progress on account of bogus purchases of Rs. 26,12,41,822/-.”

4. When the case was called for hearing neither the assessee nor any authorized representative (AR) appeared despite repeated service of notice. Therefore, we find it appropriate to adjudicate the appeal ex parte qua assessee after hearing the arguments of the ld CIT DR.

5. From the memo of the ground of appeal it is clearly discernable that the assessee has not pressed Ground Nos. 2, 3, 4 and 6 therefore, same are dismissed as not being pressed.

6. Apropos remaining effective sole ground No. 1 of assessee is with regard to confirming the addition of Rs. 38,78,388/- as income from other sources.

7. From the assessment order we note that the AO has made addition of Rs. 38,78,388/- on account of cash seized during the search and seizure operation. On being asked by the AO the assessee stated that these receipts have been received on account of advance received from the customers and as no sale has been booked. The assessee explained before the AO that the amount of advance would be included when the sale is recognized. However, the AO did not agree with the said explanation of the assessee and made addition by observing that it is only due

- to search that these cash receipts have been noticed and found that the same have not been recorded in the books of account. Accordingly, the AO made addition u/s 69A of the Act treating the same as unexplained money received by the assessee during the relevant financial year.
8. From the relevant part of first appellate order we further note that the Id CIT(A) while adjudicating ground No. 5 of assessee noted the written submissions of the assessee in para 7.1 of first appellate order wherein, the assessee submitted that the amount is duly recorded in the books of account and it is not a case of the assessee has not offered any explanation. It was also contended by the assessee that when the nature and source of cash receipts are established from the seized material itself provision of section 69A of the Act cannot be applied for making any addition in the hands of the assessee. Placing reliance on the order of the ITAT Pune Bench in the case Dhanvarsha Builders & Developers (P) Ltd Vs. DCIT (2006) 102 ITD 375 (Pune), it was contended that the concept of income is a legal concept and amount of real income has to be arrived at after considering various other aspect such as expenditure and year of taxability and even in case of undisclosed income detected as a result of search, accounting of profit has still to be made on the basis of method of accounting followed by the assessee.
9. The Id CIT(A) after considering the above written submissions and contentions of the assessee held that during the search and seizure operating incriminating documents indicating unaccounted cash receipts from customers was found and seized. There is no quarrel as to the nature or quantum of the amounts. The Id CIT(A) also noted that at the time of search and seizure operation cash receipts were not recorded in the books of account and these appeared to have been entered in the books of account subsequently. The Id CIT(A) further noted that no doubt the amount may have been entered into books of account of the appellant as advance from customers but the facts remain that these amounts were on money received in cash against the sale of flats and never intended to be accounted for or included in the books of account of the assessee. The Id CIT(A) also noted that the regular business activities have been duly accounted regularly in the books of account and the business transactions which have not been recorded in the books

of account equated or treated on the equal footing. The Id CIT(A) concluded that the income from regular business transaction has to be taxed under the business head income from unaccounted/ undisclosed business transactions are not mandated by the law and are to be treated differently and taxed under the head income from other sources.

10. In view of the above, submissions of the assessee submitted before the authorities below allegations of the AO and findings recorded by the Id CIT(A) in para 7.2 to 7.5. It is apparent that the assessee is engaged in construction of flats and trading in immovable property. The AO categorically noted that the receipts found and seized during the search operation was not recorded in the books of account of the assessee and in a case when there would be no search then the same could not be revealed or unearth to the department. The Id CIT(A) also noted that the assessee has included the amounts in the books of account subsequently and there is no appropriate explanation regarding treatment of the same as advance from customers. In view of the above factual findings recorded by the Id CIT(A) we are of the considered view that undisputedly the assessee entered the amounts of cash receipts in the books of account as advance from customers but in fact these amounts were on money receipt in cash against the sale of flats and never intended to be accounted for by the assessee in its books of account. Therefore, when the transactions of sale of flats have attained finality then it is obvious that all the amounts receipt by the assessee and recorded in the books of account of the assessee as advance from customers has to be set off and included in the turnover of the assessee. At the same time when the amounts received in cash against the same transaction of sale of flats which have not been recorded in the books of account of the assessee at the time of search and seizure operation and subsequently recorded in the books as advance from customers is nothing but an eye wash to supplement the explanation of the assessee regarding the cash receipts. We are unable to agree with the contention and submission of the assessee placed before the authorities below and at the same time we are inclined to agree with the findings recorded by the Id CIT(A) as noted above, while confirming the addition are correct but his findings towards change of charging section from 69A to 56 are not correct. Therefore in view of foregoing we are inclined to hold that the addition

made by the AO deserves to be confirmed in the hands of the assessee u/s 69A of the Act. Accordingly, ground No. 1 of the assessee is also dismissed.

Revenue appeal ITA no. 2623/Del/2014 for AY 2011-12

11. Ground no. 1 of revenue is general in nature which requires no specific adjudication. Apropos ground no. 2 the ld. Senior DR submitted that the ld. CIT(A) has erred in deleting the addition made by the Assessing Officer u/s. 69A of the Act. Drawing our attention towards relevant part of the assessment order para 7 the ld. Senior DR submitted that before the Assessing Officer the assessee stated that impugned cash receipts have been received on account of advances against flats/plots and the same has been shown as an advance from customers against which no sale has been booked and it will be taxed when the sale is recognized. The ld. Senior (DR) submitted that these amounts were not recorded in the books of accounts of assessee and notice by the Department only due to search operation therefore the Assessing Officer was right in making addition in the hands of assessee treating the same as unexplained money u/s. 69A of the Act. He further submitted that the ld. CIT(A) has deleted the addition u/s. 69A of the Act without any basis and directed the Assessing Officer to tax u/s. 56 of the Act as income from other sources therefore the first appellate order may kindly be set aside by restoring that of the Assessing Officer.
12. On careful consideration of above noted explanation of the assessee placed before the authorities below and findings recorded by the Assessing Officer as well as ld. CIT(A) at the very outset we may point out that in assessee appeal ground no. 1 the assessee has challenged the addition of identical amount confirmed by the ld. CIT(A) to be taxed u/s. 56 of the Act, under the head income from other sources. In the earlier part of this order we have dismissed the said ground of assessee and in para 10 supra have recorded a detailed finding confirming the action of the Assessing Officer. Therefore ground no. 1 of revenue, linked with the same issue, is allowed. Consequently, first appellate order to this extent is reversed that the impugned cash amounts, at the time of receipts were not recorded in the books of accounts as received against the transaction of sale of flats and the same was not found to be recorded at the time of search and seizure operation. In fact these

amounts were recorded subsequently in the books of account of assessee as advanced from customers but when the transactions of sale of flats have attained finality but the intention of assessee was clear that he did not want include the same in turnover at the time of completion of transaction of sale of flats and therefore the Assessing Officer was right in treating the same as unexplained money u/s. 69A of the Act. Therefore the Id. CIT(A) was not correct in changing the charging section from 69A to 56 of the Act and addition is confirmed u/s. 69A of the Act. Accordingly, ground no. 2 of revenue is allowed.

Ground no. 3 of Revenue.

13. The Id. Senior DR submitted that the Assessing Officer was right and justified in making addition in the hands of assessee by observing that the company has received the cash by issue of check on account of purchase bills. The Id. Senior DR drew our attention towards para 5.1 to 5.2 of first appellate order submitted that the Assessing Officer observed from receipt and payment account and also noted that no transaction on account of payment to BOMB Authority of Rs. 45 lakh, Noida Authority of Rs. 5 crore and Billing Commission of Rs. 12,50,000/- total of Rs. 5,57,500/- has not been recorded in the books of accounts of assessee therefore the Assessing Officer was right in treating the same as unexplained expenditure and taxing the same as deemed income of assessee u/s. 69C of the Act. The Id. Senior DR vehemently pointed out that the Id. CIT(A) has granted relief to the assessee without any basis therefore the first appellate order may kindly be set aside by restoring that of the Assessing

Officer.

14. From the submissions of the assessee before Id. CIT(A), which has been reproduced in para 5.1, we note that the first contention of assessee is that the assessee has not claim impugned amounts as deduction. The second contention is that the Assessing Officer in para 5.2 of assessment order has himself admitted that the assessee company has received the cash by issue of check of purchase bill and cash generated thereof has been used for making payments.

Therefore the assessee submitted that no addition is called for.

15. From operative para 5.2 to the first appellate order we note that the Id. CIT(A) recorded following conclusion for granting relief to the assessee:-

5.2 I have considered the assessment order and the submissions made. It is non disputed that the source of payment was from bank account of the appellant duly disclosed in the books. It is also not disputed that these payments were utilized for taking back cash to be spent for other purposes which could not have been recorded as such. However, fact remains that the source of these expenses is not unexplained as it was funded through disclosed bank accounts and ultimately the expenses have not been claimed in the P & L Account. Therefore, even if there is evidence to show expenses of irregular nature, if the source is explained and the expenses have not been claimed, no addition is called for. I hold accordingly. The addition made does not have any impact on the income of the appellant and cannot be legally sustained. The addition is deleted and this ground of appeal is allowed.

16. In view of foregoing conclusion recorded by the Assessing Officer while making addition and findings of the Id. CIT(A) while deleting the addition, first of all we note that the Assessing Officer proceeded to make addition on basis of material found and seized during the course of search and seizure operation particularly incriminating document page 61 to 64, annexure A1, Party AB-3 and receipt and payment account for the period 01.08.2010 to 20.10.2010. The Assessing Officer reproduced the contents and receipt and payment account and thereafter observed that no transactions on payment of commission, BOMB Authority and Noida Authority is recorded in the books of accounts of assessee and he made addition u/s. 69C of the Act treating the same as unexplained expenditure. The Id. CIT(A) deleted the addition only by observing that the source of payment was bank account of appellant duly disclosed and also noted that these payments were utilised for taking back cash to be spent for other purposes which could not have been recorded as such. We are not in agreement with the findings recorded by the Id. CIT(A) without even looking into the books of accounts of assessee and relevant bank account from where the transactions were undertaken. The Id. CIT(A) has not considered a very relevant assertion of Assessing Officer that these transaction/expenditures were not recorded in the books of accounts of the assessee which clearly shows the intention behind this strategy of assessee. Therefore the findings recorded by the Id. CIT(A) has not legs to stand and therefore the same are set aside. However in our considered opinion the tax authorities should have examined and verified the contention of the assessee that

the source is cash receipt against the bills and the same was again utilized for incurring expenditure on commission and payment by way of examination of books of account and relevant bank accounts of assessee as to how the cash was generated and Revenue-deposited for making further payments and incurring expenditure. The Id. CIT(A) is directed to adjudicate the issue afresh after allowing due opportunity of hearing to the assessee and without being influenced with the earlier first appellate order. Accordingly, ground no. 3 of revenue is allowed for statistical purposes.

17. The Id. Senior DR supporting the assessment submitted that the assessee company was involved in bogus purchases from various parties which were not genuine and thereby reducing the taxability of income of assessee. The Id. Senior DR submitted that during the year under consideration the assessee company has shown purchases/construction expenses to the tune of Rs. 59,03,83,048/- and this amount includes purchases that the assessee has claimed as expenditure on account of purchases from certain parties who were involved in issuing bogus purchase bill and effecting payments through banking channel for commission and not actually supported with physical transport of goods. The Id. Senior DR submitted that during the course of search incriminating documents that is ledger account of various parties were seized at page 2, 3 & 4 of Annexure A-3, Party AB-3 which shows certain cash receipts from various bogus party on different dates which includes purchase of raw material/building construction material such as cement, iron & steel totaling to Rs. 37,65,00,000/- which was rightly treated as bogus by the Assessing Officer. The Id. Senior DR submitted that during survey operation u/s. 133A of the Act was carried out on M/s Shri Saraswati Steel Centre and M/s. Laxmi Enterprises by ADIT (Inv.)-II Ghaziabad which were bogus entry provider and in the statement they admitted to provide entries for purchase of bills amounting to Rs. 31,43,88,970/- and Rs. 72,28,04,582/- to the assessee and in order to verify the veracity of said transactions of purchased during the course search enquiry the assessee was asked to furnish collateral evidences like bills of transport, toll naka entries, details of destination and utilisation thereon but assessee could not furnish any details as asked for. The Id. Senior DR drew our attention towards para 4 of assessment order and submitted that the assessee vide

- reply dated 21.03.2013 submitted list of fourteen parties and submitted copy of account purchase bill only but failed to produce freight bill and Dharm Kata Weigh bill and also failed to produce parties to prove the genuineness of purchase.
18. The Id. Senior DR submitted that the Assessing Officer conducted inquiry by way of issuing notice u/s. 131 of the Act, and through Income Tax Inspector and thereafter went into detail for all fourteen parties and recorded detailed findings against the assessee in para 4.4 to 4.6 of assessment order and rightly disallowed and reduced amount of Rs. 27,23,09,422/- from work in progress out of which Rs. 26,12,41,822/- was pertaining to the year under consideration i.e. FY 2010-11 relevant to AY 2011-12, treating the same as bogus purchases claimed by the assessee by enhancing work in progress he submitted that the Id. CIT(A) has granted relief to the assessee by recording cryptic findings in para 4.2 therefore the first appellate order may kindly be set aside by restoring that of the Assessing Officer.
19. From relevant part of assessment order we note that the assessee failed to substantiate claim of purchase of construction material before the Assessing Officer despite due opportunity was given by the Assessing Officer. The Assessing Officer also issued notices 131 of the Act and also made inquiry through Income Tax Inspector and thereafter recorded a detail findings in paras 4.4 to 4.6 which are as follows:-
- 4.4. The assessee vide order sheet entry dated 21.03.2013 was appraised as to the enquiries conducted in terms of issue of summon us. 131 and physical enquiry conducted by the Inspector which reveals that these parties are not genuine business entity but mainly entry providers indulging in issue of bills but not effecting true sales. Therefore, A.R. of the assessee was finally asked to produce the above parties along with books of accounts & IT to prove the genuineness of the party and the transactions and failure to which the purchase transactions will be treated as bogus. The case was adjourned to 22.03.2013 to 25.03.2013. However, none attended nor any party was produced to prove the genuineness of the transaction of purchase of material from the above mentioned parties. This shows that the assessee has nothing to produce and offered to substantiate the genuineness of the transaction of purchase of goods.
- 4.5 In view of the above facts, the identity & existence of the above mentioned parties and genuineness of transactions of purchases of raw material by the assessee remained un verifiable, as:
- a) The existence of the parties on the given business as well as residential addresses were not verifiable.

- b) The location of the premises from which business is purport to be carried is such from which operation of business alleged to be carried out is not possible.
- c) The level of transactions routed through the bank account of these parties are such voluminous and big, which person of status of these parties in no manner can match.
- d) All the accounts operated in Vijya Bank, Rajdhani Enclave, Vikas Marg, Delhi - 110092 in the name of 7 concerns are being introduced by one person viz. Sh. Neeraj Kumar of M/s. Neeraj Enterprises, which has been done as a part of scheme to create entity for providing the bogus bill.
- e) The accounts opened in Vijya Bank in the name of 7 concerns have been opened at one span of time as all these accounts, bear the account numbers in almost chronological order, which confirm the operation of one mind to create entity for issue of bogus bills.
- f) All the accounts opened in Vijya Bank at one point of time and catering to Amrapali and Gardenia Group of Company, clearly proved that these are managed and operated by these group only to service their illegitimate purpose of enhancing the cost of construction.
- g) Further, the analysis of these accounts shows that a few persons operates more than one accounts as per the following details:
- i) Sh. Gopal Krishn, R/o: C-118, Panchsheel Enclave, Sahibabad, Loni Road, Delhi - 110032
- a. M/s. Bansal Trading Co.
 - b. M/s. SC. Trading Co.
 - c. M/s. Guru Nanak Trading Co. ...
- ii) Sh. Gopal Gupta, R/o: 3/3-), Extension, 2nd Floor, Street No.6, Murti Wali Gali, Laxmi Nagar, Delhi-110092
- a. M/s. Om Enterprises
 - b. M/s. Paras Enterprises C.
- M/s. Jai Shree Trading Co. ill) Sh. Kishori Lal, R/o: D-78, LIG Flats, Lajpat Nagar, Sahibabad
- a. M/s. Shree Bankey Traders
 - b. M/s. Tirupati International

As none of these persons are existing on the given addresses and by no stretch of imagination can construed to transact the sale of iron & steels routed through these accounts having more than one firm, as above.

h) As during the course of survey done by ADIT (Inv.), Unit-II Ghaziabad(U.P) that the above party admitted to have received commission of 25 paise for every 100 rupees for providing entry for sale of goods.

Money routed through the bank accounts are at first stage transferred to other accounts and at second stage these are withdrawn mostly in cash, which is repatriated to the beneficiary i.e. the assessee company and its associates in cash.

Moreover, failure on the part of the assessee to produce such parties inspite of the repeated opportunity given to them conclusively prove that no such party actual exist which can

stand and own-up the transactions alleged to be routed through their bank accounts and issue of purchase bills.

4.6 Accordingly, the transactions of purchase of building materials/steels alleged to be sourced from these parties are remained unverified and treaded as "Bogus & Unexplained Expenditure" Accordingly, the purchases claimed by the assessee from the above mentioned parties total amounting to Rs. 27,12,41,822/- is not genuine and to be treated as "Bogus". Out of this, the transaction with M/s. Bajrang Trading Co. has been separately taxed supra, hence this amount shall be reduced from here. As no sales have been booked by the assessee upto this assessment year, the cost incurred so far are being booked under the head 'Closing Work-in-Progress', therefore, the bogus purchase determined above shall be reduced from the closing workin; progress. The closing work-in-progress claimed by the assessee were of Rs.150,64,62,261/-, which will be reduced by the amount of bogus purchase of Rs. 27,23,09,422/- (bogus purchases for AY. 2011-12 at Rs. 26,12,41,822 + bogus purchases for A.Y. 2010-11 at Rs. 1, 10,67,600) and the value to be carried forwarded in next year comes to Rs. 123,41,52,839/-.

20. The Id. CIT(A) firstly, reproduced the submission of assessee and thereafter in para 4.2 recorded a brief and cryptic conclusion that the matter was no required to be looked into at the stage of assessment for AY 2011-12 as the disallowance of expenditure claimed by the appellant does not have any implications on its income as it has been accounted for as work in progress. After these findings the Id. CIT(A) concluded that he deem it fit to direct the Assessing Officer to make available or adverse material and to allow necessary opportunity to the appellant to explain/revert the evidence and this exercise may be undertaken during the assessment proceedings for AY 2012-13 and 2013-14 when the said expenditure embedded in the work in progress will be considered for computing the income of assessee as per project completion method and will be free to take action according to law. With these findings he set aside the action of the Assessing Officer excluding the impugned expenditure from the work in progress.

21. In our considered view, the bogus claim unearth and found during the course of search and seizure operation and post search enquiry and outcome of survey operation on the related parties which were found to be in the business of providing bogus purchases entries and with whom the assessee under taken purchases and added the same to the work in progress. In our considered opinion the assessee is not deserve to be allowed to show an include bogus purchases and to add the same to work in progress with an intention to increase the cost of construction and consequently reducing the profit therefrom. The Assessing Officer has made detailed enquiry and thereafter recorded a clear findings, as has been reproduced hereinabove then the Id. CIT(A) cannot be held as correct and

justified in dismissing the action of the Assessing Officer which reduced work in progress shown by the assessee in the books of accounts. The bogus purchases cannot be allowed to be continued and to be shown as part of work in progress till the project is completed and sale is affected. When the Assessing Officer has found that the purchases are bogus and work in progress has been enhanced with the aid of bogus purchases then the same has to be reduced instantly in the year in which these were shown and recorded in the books of accounts and particularly in the work in progress account. Therefore first appellate order on this count is not found to be sustainable and thus we reverse the same. The action of the Assessing Officer in reducing work in progress by the amount of work in progress is restored. Accordingly ground no. 4 of revenue is allowed.

22. In the result, appeal of the assessee is dismissed and appeal of the revenue is partly allowed for ground no. 2 & 4 and partly allowed for statistical purposes on ground .3

Order pronounced in the open court on 16/06/2023.

-Sd/-

(B. R. R. Kumar)
MEMBER

-Sd/-

(C. M. GARG) ACCOUNTANT
JUDICIAL MEMBER

Dated: 16/06/2023 A K
Keot/NV

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi