

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.2852/Del/2023
(Assessment Year : 2017-18)**

Raksha Buildtech Private Limited,
306-308, 3rd Floor, Square One,
C-2, District Centre, Saket,
New Delhi – 110 017.

vs.

ITO, Ward 21(1),
Delhi.

(PAN : AADCR3524Q)

ASSESSEE BY : Shri Salil Kapoor, Advocate
Shri Shivam Garg, Advocate
Shri Utkarsa Gupta, CA

REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing : 14.11.2024

Date of Order : 07.02.2025

ORDER

PER S. RIFAUR RAHMAN, AM :

1. This appeal has been filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)/National Faceless Appeal centre (NFAC), Delhi (hereinafter referred to as 'Id. CIT (A)') dated 16.08.2023 for the Assessment Year 2017-18.
2. Brief facts of the case are, assessee filed its return of income on 24.10.2017 declaring loss of Rs.8,350/-. Return was processed under section 143(1) of the Income-tax Act, 1961 (for short 'the Act'). The case was selected for scrutiny,

accordingly notices u/s 143(1) and 142(1) of the Act were issued and served on the assessee. In response, assessee filed relevant information as called for.

3. The assessee company was incorporated on 14.08.2006 and assessee is a builder, developers, colonizers, civil contractors and maintainers of residential buildings, flats, colonies, township and commercial premises etc. The assessee is a subsidiary of M/s. Emaar MGF Land Limited having 100% shares in the assessee company. During assessment proceedings, assessee was asked to submit documentary invoices in respect of inventories shown in the Balance Sheet amounting to Rs.70.64 crores with particulars of venue, area, completion stage and current status of the inventory. It was also asked to furnish copy of collaboration agreement against which liability of Rs.70.74 crores was created with mode of payment received. In response, assessee has submitted that it has taken advance against collaboration agreement from its ultimate holding company for acquiring lands. The Assessing Officer observed that assessee has made and executed collaboration agreement on 21.02.2017 with its holding company for a consideration of Rs.100 crore as interest free refundable advance/ security deposit. Further the Assessing Officer observed from the audited Balance Sheet that advance received towards collaboration agreement on 31.03.2017 is of Rs.70,73,56,622/- and stock in hand shown as inventories of Rs.70,64,18,294/- in total value of Balance Sheet amounting to Rs.70,64,30,083/-

. He observed from the Article 4 of the collaboration agreement, after which “it was agreed that within seven days of the grant of license procured by the Owner in respect of the said land, the Owner shall allow the Developer to enter the said land.” From the above, he observed that the agreement was made not for the endless period but there was some limitation as even an ordinary man of common prudence may think prior to advancing of money for execution of work at the minimum available time period so that money advanced may not be in the stagnated state. He observed that during the year under consideration, assessee failed to provide particulars of inventories as asked for in the format vide questionnaire dated 12.12.2019 whereas the assessee was also asked to furnish particulars of sale deed in respect of these inventories and source of purchase. Further assessee was asked to provide the current status of the inventories but no particular reply was submitted but since there was no change in the inventory it can be assumed no change was also made in the alteration/modification made in the inventories. In order to verify the same, several notices u/s 142(1) were issued to the assessee, the assessee could not provide copies of sale deeds in respect of inventories reflected in its Balance Sheet as on 31.03.2017. However, in the submissions dated 17.12.2019 and 19.12.2019, assessee furnished copy of deeds in respect of purchase of inventories/ immovable properties. The details of inventories are reproduced in para 12 of the order. After considering the above

list, Assessing Officer found that assessee did not provide sale deed of properties at Village Kodliaball/Bejai Church, Mangalore (Area 0.1279 acres) with purchase price of Rs.2,48,94,564/- and Village Kodliaball/Bejai Church, Mangalore (Area 0.0325 Acres) with purchase price of Rs.63,46,580/-. Since assessee has not furnished the above details, AO came to the conclusion that the assessee could not justify its purchases of immovable property to the extent of Rs.3,12,41,144/-. Accordingly, he made addition to that extent and treated the same as money not utilised for purchase of properties.

4. Aggrieved, assessee preferred an appeal before the Id.CIT (A) and filed detailed submissions. After consideration the detailed submissions of the assessee, Id. CIT (A) observed that he has gone through the written submissions and no details were filed on the advances received. Since no details were filed on the sources of advances and the source of the purchases of the properties, hence the addition made by the Assessing Officer is sustained and the appeal of the assessee is dismissed.
5. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“1. That, in view of the facts and circumstances of the case and in law, the assessment order dated 31.12.2019 passed by the Assessing Officer ('AO') under section 143(3) of the Income Tax Act, 1961 ('the Act'), the order passed by the National Faceless Appeal Centre ('NFAC/CIT(A)') in upholding the assessment order and also the addition made therein is illegal, bad in law and without jurisdiction.

2. *That, in view of the facts and circumstances of the case, the addition of Rs.3,12,41,144/- is illegal bad in law and deserves to be deleted. The Assessing Officer/NFAC has erred in not appreciating the basic fact that the transaction does not pertain to the year under consideration and hence no addition could be made.*
3. *That in view of the facts and circumstance of the case and in law, the AO/NFAC has erred in making the addition under Section 68 of the Act and has failed to appreciate that the mandatory pre-condition for invoking section 68 of the Act have not been fulfilled in the present case and thus the invocation of the Section and the addition made then in is illegal, bad in law and liable to be deleted.*
4. *That in view of the fact and circumstances of the case and in law the Assessing Officer/NFAC has erred in treating the addition of Rs.312,41,244/- as money not utilized for tile purchase of properties and has alleged that funds received as advance has been diverted. The said allegation is based on mere surmises and conjectures.*
5. *That, the Appellant had discharged its onus to prove the identity, creditworthiness and genuineness of the transaction by furnishing the detail of advance as received from Emaar, its address, PAN, Collaboration agreement with Emaar, confirmation from Emaar and Income Tax return of Emaar. Hence, all necessary detail and evidences have been duly filed and furnished.*
6. *That, in view of the facts and circumstances of the case, the Assessing Officer/NFAC has erred in passing the impugned assessment order without giving the assessee any show cause notice and reasonable opportunity, thereby violating principles or natural justice.*
7. *That, in view of the facts and circumstances of the case and in law, the NFAC has erred in ignoring and not admitting the Rule 46A application as preferred by the Appellant.*
8. *That, in view of the facts and circumstance of the case and in law, the Assessing Officer/ NFAC has erred in not appreciating that Section 115BBE is not applicable,*
9. *That the explanations given, evidence produced and material placed and made available on record have not been properly*

considered and judicially interpreted. The observation/addition made is unjust, illegal arbitrary, highly excessive and based on surmises and conjectures,

10. That interest under Section 234B of the Act has been wrongly and illegally charged and has been wrongly worked out.

11. That, the AO has erred in initiation of penalty proceedings under Section 271AAC of the Act.”

6. At the time of hearing, Id. AR of the assessee brought to our notice findings of the Assessing Officer at pages 25 & 26 of the paper book. He further brought to our notice page 89 of the paper book which is the Balance Sheet wherein assessee has declared the inventories of Rs.70,64,18,294/- and further he brought to our notice other current liabilities which is recorded at Rs.70,73,56,622/-. He also brought to our notice the similar amounts mentioned in inventories and other current liabilities which are carried forward amounts from 1st April, 2015. Further he brought to our notice page 202 of the paper book wherein the assessee has informed the Assessing Officer that the company is in the real estate business which had acquired the land in various parts of the country during FY 2005-06, 2007-08 and 2007-08. Further there is no movement in closing stock from so many years as there is no current feasibility of launching the project as of now. It was submitted that when the company launches any project then the movement in closing stock would be made as per the terms of the collaboration agreement.

7. Further Id. AR brought to our notice page 492 of the paper book which is the submissions/petition filed by the assessee under Rule 46A of the Income-tax Rules, 1962 before Id. CIT (A)/NFAC wherein the assessee has submitted the proof of purchases which were not filed before the Assessing Officer due to time barred assessment and shortage of time. The assessee has submitted copy of sale deed of Rs.63,46,580/- which is the 5th item of details of inventory submitted before the Assessing Officer. However, he submitted that the above additional evidences were not considered by the Id. CIT (A) and he brought to our notice the relevant sale deed placed on record at page 494 of the paper book.
8. Further he brought to our notice page 38 of the paper book wherein assessee has made submission before the Id. CIT (A)/NFAC vide letter dated 14.08.2023. In the above submissions, it was submitted that the assessee has inadvertently mentioned that assessee is in possession of land amounting to Rs.2,48,94,564/- in Village Kodialbail/Bejal Church in State of Karnataka. It was submitted that at the time of purchase of land, there was certain additional costs, such as, mutation, brokerage, legal fees, etc. which are attached with the actual cost of the land in order to transfer the land property in compliance with the rules and regulation framed by the respective states. The assessee has submitted details of inventories of Rs.70.64 crores and reinstating the abovesaid additional cost as under :-

Land Registry No.	Registry Value (A)	Stamp papers (B)	Mutation (C)	Brokerage (D)	AI (E)	Legal Expenses (F)	Total of Land Cost (G)	Remarks
3908	5,71,20,000	53,69,280	57,120	11,42,400	-	1,10,029	6,37,98,829	
3905	5,13,18,750	48,23,970	51,319	10,26,375	-	98,854	5,73,19,268	
3904	1,07,10,000	10,06,740	10,710	2,14,200	-	20,630	1,19,62,280	
3906	58,01,250	5,45,330	5,801	1,16,025	-	11,175	64,79,581	Refer Para 2 ✓
3907	49,80,15,000	4,68,13,410	4,98,015	1,99,20,600	6,31,999	9,79,312	56,68,58,336	
Total	62,29,65,000	5,85,58,730	6,22,965	2,24,19,600	6,31,999	12,20,000	70,64,18,294	

And also submitted as under :-

“On perusal of the above-mentioned table, it can be seen that apart from the Registry Value and Stamp Papers cost there are also certain costs which are attached with the purchase cost of land, The Appellant has inadvertently disclosed amount of Rs.2,48,94,5641- as one of the line items being land, which is in reality is total of column C, D, E, and F of the abovementioned table (i.e., Rs. 6,22,965 + 2,24,19,600 + 6.31,999 + 12,20,000) i.e., these are the additional costs other than the registry value and stamp paper charges which have been incurred by the Appellant in order to acquire the land. Since, it was a misrepresentation thus in actual the land does not exist in reality hence, it will be not possible for the Appellant to provide sale 1 conveyance deed against this. It is hereby also submitted that all the cost which has been incurred by the Appellant against purchase of these land has been capitalized in the books of account i.e., the Appellant has not claimed expense against these cost in their profit and loss statement and since it has been not claimed in books of account as expense, the addition made by the Ld. AO is clearly unwarranted and bad in law hence, the addition made by the Ld. AO is clearly baseless and incorrect.”

9. He submitted that Id.CIT (A) has not considered the above submissions made before him and sustained the addition made by the Assessing Officer. Further he submitted that the assessee has not claimed any expenditure. The Assessing Officer cannot invoke the provisions of section 68 of the Act and made addition

in this assessment year and further all the purchases were made in the earlier assessment years. In this regard, he relied on the decision of CIT vs. Usha Stud Agricultural Farms Ltd. (2008) 301 ITR 384 (Delhi).

10. On the other hand, ld. DR of the Revenue relied on the orders of the authorities below.
11. Considered the rival submissions and material placed on record. We observed that based on the collaboration agreement entered by the assessee with its holding company to acquire the lands based on the abovesaid collaboration agreement dated 21.02.2007 and as per the above collaboration agreement, assessee has received an amount of Rs.70.74 crores as interest free refundable/ security deposits from its holding company. Accordingly, assessee has purchased lands in Karnataka incurring total cost of Rs.70,64,18,294/- and also assessee has declared equivalent liabilities in its Balance Sheet of Rs.70,73,56,622/-. During assessment proceedings, the Assessing Officer through section 142 (1) notice directed the assessee to furnish the details of abovesaid inventories listed in the Balance Sheet. The assessee has submitted list of inventories which was reproduced by the Assessing Officer in his order and based on the details of documents furnished by the assessee, the Assessing Officer found that Item No.3 & 5 of inventories for which assessee has not submitted any supporting documents. Since assessee has failed to furnish the same he proceeded to make

the addition u/s 68 of the Act. Assessee has submitted additional evidences under Rule 46A before the Id. CIT (A) and furnished the relevant document of Item No.5 and also submitted mistake in details of inventories furnished before the Assessing Officer in Item No.3 of value of Rs.2,48,94,564/- which is nothing but the additional expenditure incurred by the assessee towards mutation, brokerage, legal fees, etc. which the assessee has to apportion the same to all the other inventories/land purchased by the assessee. For that purpose, assessee had submitted revised statement of inventories before Id. CIT (A). However, Id. CIT(A) has not considered any of the above evidences and sustained the addition made by the Assessing Officer.

12. After considering the submissions made before us, we observed that as far as Item No.5 is concerned, assessee has submitted additional evidences in the form of sale deed which tallies with the itemwise inventories submitted before the Assessing Officer. Since the relevant information is already submitted by the assessee in the form of additional evidences before the Id.CIT (A) which Id. CIT(A) has failed to acknowledge the same. In the result, we are inclined to allow the above claim made by the assessee.
13. With regard to the inventory list, which is listed at Item No.3 of Rs.2,48,94,564/-, the assessee has submitted that these are additional costs incurred by the assessee which assessee has inadvertently listed as separate item of inventory which is

otherwise should have been apportioned. Since this requires certain verification we deem it fit and proper to remit this issue back to the file of Assessing Officer with limited direction to verify the correctness of the claim of the assessee.

14. Coming to the addition made by the Assessing Officer under section 68 of the Act, we observed that the assessee has received advances from its holding company for purchase of the abovesaid lands and invested the funds received from its holding company in the inventories and the inventories were actually acquired by the assessee in FY 2005-06, 2006-07 & 2007-08 and assessee has carried on the above inventories until the current assessment year without there being any movement. Since the funds were invested in earlier assessment year and also assessee has shown the source of the above funds, there is no requirement for initiation of section 68 under the present circumstances.
15. In the similar situation, Hon'ble Delhi High Court in the case of CIT vs. Usha Stud Agricultural Farms Ltd. (supra) held as under :-

“7. Here, the CIT(A) has deleted the addition of Rs.15 lacs mainly on the ground that this credit balance of Rs.15 lacs is being reflected in the accounts of the Assessee over the past four to five years or so and hence this was not a fresh credit entry of the previous year under consideration and these credit entries were already made and accounted for in the assessment years 1995-96 and 1997-98 which were introduced in the form of advance against breeding stallions owned by the Assessee and thus these credit entries did not relate to the year under consideration for being considered under Section 68 of the Act.

8. *Since it is a finding of fact recorded by the CIT(A) that this credit balance appearing in the accounts of the Assessee, does not pertain to the year under consideration, under these circumstances, the Assessing Officer was not justified in making the impugned addition under Section 68 of the Act and as such no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A).*

9. *The above being the position, no fault can be found with the view taken by the Tribunal."*

16. Respectfully following the above decision, we observed that the transaction under consideration is made by the assessee in FYs 2007-08, 2008-09 & 2009-10, section 68 cannot be invoked in the circumstances of the present case.
17. In the result, the appeal of the assessee filed by the assessee is allowed.

Order pronounced in the open court on this 7th day of February, 2025.

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 07.02.2025
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**