

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3228/Del/2015
(Assessment Year : 2011-12)

M/s. Godwin Construction Pvt. Ltd. A-151, Defence Colony, Mawana Road, Meerut PAN No. AAEEFG 1843 R (APPELLANT)	Vs.	ACIT Central Circle Meerut (RESPONDENT)
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Assessee by	Shri Sandeep Sapra, C.A.
Revenue by	Shri R. K. Gupta, CIT (D.R.)

Date of hearing:	29.11.2022
Date of Pronouncement:	10.01.2023

ORDER

PER ANIL CHATURVEDI, AM :

This present appeal filed by the assessee is directed against the order dated 30.03.2015 of the Commissioner of Income Tax (Appeals)-Meerut relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. The assessee is a company. AO has noted that a search operation was carried out at the premises of the assessee and its

site office on 09.09.2010. After examination of the documents seized, notice u/s 142(1)A of the Act was issued to the assessee on 23.02.2012 calling for the return of income and in response to which, assessee filed return of income for A.Y. 2011-12 declaring income at Rs.24,27,270/-. Thereafter, the case was taken up for scrutiny and consequently the assessment was framed on 31.03.2013 u/s 143(3) determining the total income at Rs.2,72,74,270/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 30.03.2015 in Appeal No.192/13-14 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal and has raised the following grounds:

1. *That the learned Commissioner of Income Tax (Appeals) (hereinafter referred to as 'Id. CIT (A)') has erred in law as well as on the facts of the case by confirming the following additions:-*

(a) *Addition towards alleged payments/deposits from others as per page no.- 74A of annexure- A-2 treating the same as own undisclosed money introduced in the name of allottees, u/s 68 of the Income Tax Act, 1961. Rs.51,39,000/-*

(b) *Addition towards alleged receipt of money from various persons as per page no. 12 of Annexure -A-2 holding the same as unaccounted money of the appellant. Rs.66,31,000/-*

The various findings made by the authorities below for making and upholding the additions as above are based on assumptions and irrelevant considerations unsupported by any material on record and the various submissions made by the appellant and the material on record have not been considered in right perspective thereof.

2. *That without prejudice to above, the confirmation of addition of Rs.51,39,000/- u/s 68 of the Income Tax Act, 1961 is totally unlawful and unwarranted, as no unexplained cash credit is found recorded in the books of account of the appellant for the year under reference and therefore section 68 could not be invoked and for that reason alone the addition deserves to be deleted.*
3. *That without prejudice to above, the confirmation of addition of Rs.66,31,000/- in the hands of the appellant as unaccounted money is totally unfounded and unsupported by any entry in the books of account or any other cogent material on record or any unexplained asset found or seized and therefore the same deserves to be deleted.*
4. *The appellant craves leave to add, modify and/ or delete any grounds of appeal.”*
5. Through the aforesaid grounds, assessee is challenging the addition of Rs. 51,39,000/- and Rs. 66,31,000/-.
6. With respect to the addition of Rs 51,39,000/-, AO noted that during the course of search, page no. 74A of Annexure A-1 was impounded from the site office of the assessee. The aforesaid document revealed Rs.1,27,97,000/- was received by the assessee from Dev Priya Group and others as deposits. The AO issued the show-cause notice to the assessee asking him to show as to why the amount mentioned therein not be considered as undisclosed income of the assessee as the persons mentioned in that annexure have either denied any relation with the entries shown therein or had stated that they had got their money back/refunded. Assessee explained the transaction and *inter alia* submitted that out the aggregate amount of Rs.1,27,97,000/-, it has paid back Rs.72,23,000/-. AO noted that since assessee had

not given details of the amount of Rs.72,23,000/- he considered the balance amount of Rs.72,23,000/- to be assessee's own undisclosed money which was introduced by the assessee through the old/non-existent allottees. He, accordingly, made its addition u/s 68 of the Act.

7. With respect to the impugned addition of Rs.66,31,000/-, AO noted that during the course of assessment proceedings, assessee was confronted with page no. 12 of Annexure A-2 which was impounded from the site office of the assessee. The impounded page had the names of the allottees, the amount due against them at Rs.1,55,00,000/-, amount received at Rs.1,02,81,000 and balance amount shown at Rs.52,19,000/-. AO asked the assessee to give the details of the address of "A.E, NZB, MANISH, Nahar Singhji" and to explain the contents of the documents seized. Assessee *inter alia* submitted that it was defaulter list of allottees as on the date of its preparation and the reference of names of the persons through whom the booking of the property of those defaulters were introduced to the assessee for construction linked plan payment systems. AO noted that assessee did not provide any documentary evidence about the terms and conditions on which the properties were allotted and later on cancelled. AO noted that since no flats were allotted to the persons named in the list except for the 3 persons, the amount shown in the list was unaccounted income of the assessee. He, thereafter, after giving the credit for the amount

received from 3 persons, made addition of Rs.77,31,000/- as unaccounted income of the assessee.

8. Aggrieved by the aforesaid additions made by AO, Assessee carried the matter before CIT(A). With respect to the addition of Rs.72,73,000/-, CIT(A) for the reasons cited in the order restricted the addition to the extent of Rs 51,39,000/-. As far as the addition of Rs. 77,31,000 made by AO is concerned, CIT(A) noted that AO had made computational error while making the addition resulting into excess addition of Rs.11,00,000/-. He, accordingly, granted relief to the extent of Rs.11,00,000/- and upheld the addition to the extent of Rs.66,31,000/-. Aggrieved by the action of CIT(A) in upholding the addition, assessee is now before the Tribunal.

9. Before us, Ld AR reiterated the submissions made before the lower authorities and further submitted that the addition of the impugned amounts have been made by the AO only on the basis of the seized documents found during the course of search and by presuming the document belongs to the assessee and the contents thereof to be true. He pointed to the copy of the seized document (page 74A of Annexure 2) which is placed at page 17 of the paper book. He also pointed to the letter explaining the details of the document that was filed before the AO and the copy of which is placed at pages 14 to 16 of the paper book. He submitted that the list contains the details of the units allotted through the reference of Dev Priya. He submitted at all the advance were

received by the assessee in earlier years was through banking channels and none of the advance was received in cash. He pointed to the statement placed at page 18 of the paper book and from that he pointed out that the details of the amount received, the receipt number, the amount and the details of the cheque of the amount refunded are also reflected therein and those details were also given to AO. He further submitted that the presumption u/s 292C that the document belongs to the assessee and the contents thereof is true is a rebuttable presumption, as held by various High Courts, and the presumption has been rebutted by the fact of the observation of the AO in the assessment order, wherein he notes that the person mentioned in the annexure have denied any relation with those entries or stated that they have got the money back/refunded. He further submitted that AO did not confront the assessee with the outcome of the enquiry or investigation carried from Dev Priya group, Manish, Nahar Singhji. He further submitted that no unexplained credit is found recorded in the books of assessee or in the laptop found during the course of search. He therefore submitted that it is a settled law that no addition can be made only on the basis of documents found during the course of search and for making addition the document found should also be supported by other evidences. He further submitted that the AO has made the addition merely on suspicion and surmises which is unjustified and untenable. He further submitted that it is a settled law that the presumption howsoever strong cannot substitute evidence. He further submitted that that Hon'ble Punjab and Haryana High Court in

the case of CIT vs. Ram Narain Goel reported in 224 ITR 180 has held that suspicion however strong cannot take the place of evidence or proof. He therefore reiterated that since the addition has been made only on the basis of suspicion, the addition made by AO and upheld by CIT(A) deserves to be deleted.

10. Ld DR on the other hand took us through the order of lower authorities and strongly supported their orders.

11. We have heard the rival submissions and perused the material on record. The issue in the present appeal is the addition of Rs.51,39,000/- and Rs.66,31,000/- made by AO and upheld by CIT(A). It is an undisputed fact that during the course of search, certain documents were found and the assessee was called upon by the AO to explain the contents of the documents. Assessee furnished the explanations which were not found acceptable and, therefore, AO made the additions of the amounts reflected in those documents. Before us, Ld AR has placed on record the explanations that were submitted by the assessee before the authorities explaining the contents. The perusal of the same would reveal that assessee has *inter alia* given the details of the amount received, the receipt number and the details of the amount which were refunded including the cheque number and date. The explanation and the details given by the assessee has not been shown to be untrue or contrary to the facts stated before the authorities. In such a situation, we are of the view that assessee has discharged the onus cast upon it. As far as the

presumption u/s 292C is concerned, we are of the view that the provision of section 292C of the Act is only a deeming provision. The presumption under section 292C of the Act is rebuttable presumption and the document has to be considered considering the totality of the facts of the case. The deeming provision cannot be applied mechanically ignoring the facts of the case and the surrounding circumstances. Considering the totality of the aforesaid facts, we are of the view that in the present case, no addition of the impugned amounts is called for. We, therefore, direct the deletion of the additions made by AO and upheld by CIT(A). **Thus the grounds of the assessee is allowed.**

12. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 10.01.2023

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 10.01.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI