

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A”: NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 6011/DEL/2019
[Assessment Yr: 2010-11]**

Amit Kumar Bhati, D-28, South Extension Part-I, New Delhi-110049.	<u>Vs</u>	Income Tax Officer, Ward-3(4), New Delhi.
PAN- ANNPB6290K		
APPELLANT		RESPONDENT
Assessee represented by	Dr. Rakesh Gupta, Adv. & Sh. Deepesh Garg, Adv.	
Department represented by	Shri Kanv Bali, Sr. DR	
Date of hearing	22.02.2024	
Date of pronouncement	14.05.2024	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 26.03.2019 passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in Appeal no. 328/17-18 for the assessment year 2010-11, arising out of the order dated 27.12.2017 u/s 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter referred as

the “Act”), passed by the Income-tax Officer, Ward-3(4), Gurgaon (hereinafter referred in short as “Ld. AO”).

2. Brief facts are that the Assessing Officer received information that the assessee had deposited cash amounting to Rs. 29,20,960/- in the bank account and had also purchased bank draft by cash amounting to Rs. 27,59,760/- during the year under consideration. The Assessing Officer noted that the assessee had not filed any return of income for the year under consideration. The Assessing Officer accordingly recorded reasons and issued notice u/s 148. The assessee filed return declaring income of Rs. 46,100/-

2.1 The Assessing Officer pointed out that the bank statement of the assessee revealed that there were credit entries totaling Rs.1,98,59,760/-. The assessee submitted that out of the aforesaid deposits an amount of Rs.1,20,00,000/- was received as advance for purchase of land from farmers. The assessee further submitted that the assessee's grandmother had sold immovable property for her share of consideration amounting to Rs.89,23,357/- out of which Rs.39,23,357/- was received in cash and the balance amount of Rs.50,00,000/- was received in cheque. The assessee submitted that his grandmother had no bank account and accordingly deposited the aforesaid amounts in the assessee's bank account. The Assessing Officer considered the assessee's submission but was not satisfied. The

Assessing Officer held that 25% of the deposits were the unaccounted income of the assessee and added the same to the total income. Addition of Rs.49,64,940/- was challenged before CIT(A) in first appeal.

2.2 The assessee has claimed that the deposit of Rs. 1,98,59,760/- in the ICICI bank is out of the fact that as a professional land aggregator assessee had received Rs. 1,20,00,000/- from Krish Builders as advance for purchase of properties. Same was by way of cheque of Rs. 40,00,000/- on 26.03.2010 and Rs. 80,00,000/- by way of RTGS on 31.03.2010. He claimed that his grandmother Smt. Ramrati had sold land for a total sale consideration Rs. 1,63,00,000/- on 25.09.2009 along with other co-sharer and her mother had share of Rs. 89,23,357/-, which were received in the form of cash component of Rs. 39,23,357/- and a cheque of Rs. 50,00,000/- dated 29.09.2009. The same were deposited in the account of assessee as the grandmother was not holding any bank account. Further, before learned CIT(A) vide submissions dated 11.02.2019 confirmation from Krish Builders along copy of account of Krish Builders was filed. Learned CIT(A), however, doubted the identity of Krish Builders and further raised a query that as per the assessee the amount of Rs. 1,20,00,000/- received from Krish Builders was returned by way of two entries of Rs. 40,00,000/- and Rs. 80,50,000/- on 02.04.2010 and 09.04.2010 respectively. Learned CIT(A) observed that there was a cash deposit of Rs.

80,00,000/- on 07.04.2010 and of Rs. 50,00,000/- on 08.04.2010 i.e. before the payments immediately there were deposits. Learned CIT(A) also considered the fact that as per the bank statement, Rs. 40,00,000/- were transferred by way of demand draft on 02.04.2010 and Rs. 80,50,000/- were credited in the name of Harvinder Pal Singh and there was no mention of payment being made to Krish Builders. Learned CIT(A) had issued notice u/s 133(6) to M/s Brahma City Pvt. Ltd., which was formerly known as Krish Buildtech. However, this notice was not served. The assessee responded to aforesaid by submitting that on 08.04.2010 there was actually deposit of Rs. 15,00,000/- and not Rs. 50,00,000/-. It was also accepted that all the cash deposited was from previous withdrawals from bank account and some part from the sale of grandmother's share amounting to Rs. 10,07,597/-. As far as the identity of Krish Builders was concerned, on 13.02.2019 learned CIT(A) had given a copy of letter in the name of M/s Brahma City Pvt. Ltd. Learned CIT(A) then in para 10, observed as follows:

“10. The AR of the appellant vide submission dated 19.03.2019 informed that the address of M/s Brahma City Pvt. Ltd. was incorrectly mentioned in the letter. The AR of the appellant informed that the letter had been handed over to M/s Brahma City Pvt. Ltd. and they would send the reply themselves. However, no reply was received.”

2.3 Thus, considering these circumstances to be suspicious, learned CIT(A), after due notice to assessee, enhanced the addition made by the AO of Rs. 49,64,940/- to Rs. 1,20,00,000/- with following relevant findings:

“11. I have carefully considered the facts of the case, the submission of the appellant and the documents filed by the appellant. The appellant vide his written submission dated 11.02.2019 had filed a copy of the account of M/s Krrish Buildtech for the period 01.04.2009 to 31.03.2011 which is as under:-

<i>Date</i>	<i>Particular</i>	<i>Dr.</i>	<i>Cr.</i>
26.03.2010	By Bank (Advance Recd.)	4,000,000	
31.03.2010	By Bank(Advance Recd.)	8,000,000	
02.04.2010	To Bank(Repayment)		4,000,000
09.04.2010	Interest Accrued	50,000	
09.04.2010	To Bank(Repayment)		8,050,000
	Total	12,050,000	12,050,000

12. Perusal of the bank statement filed by the appellant reveals that there are cash deposits of Rs.80.00 lacs on 07.04.2010 and Rs.15.00 lacs on 08.04.2010 in the bank account immediately prior to the payment of Rs.80.50 lacs. Further as per the narration given in the bank account Rs.40.00 lacs have been transferred to DD on 02.04.2010 and Rs.80.50 lacs have been credited in the name of Harvinder Pal Singh. There is no narration of payment to M/s Krish Builders as per bank account.

13. These facts were brought to the notice of the appellant and appellant was asked to explain the discrepancies. The appellant vide his submission dated 12-3.2019 submitted that the agreement with M/s Krrish Buildtech was still valid and out of the amount of Rs. 1,20,00,000/- received by the appellant some part was repaid in the next year. The appellant further submitted that the matter is in dispute with M/s Krrish Buildtech. The relevant part of the writer submission dated 12.03.2019 have been reproduced above.

14. It is evident that this submission of the appellant is contradictory to the submission dated 11.02.2019 wherein in the appellant had filed a copy of account of M/s Krrish Buildtech as per which the entire amount of

Rs.1,20,00,000/- was repaid with interest of Rs.50,000/- within a period of 15 days from the receipt of the said amount. There is no reference of any dispute pending in this case. The confirmation furnished by the appellant is undated and does not bear any PAN number any telephone number or any e-mail address. This confirmation by itself does not prove either the identity of the creditor or the creditworthiness of the creditor. As pointed out above, the appellant was specifically asked to furnish the evidence in this regard but the appellant failed to furnish any satisfactory evidence. It is evident from the facts discussed above that in spite of a specific letter issued to the creditor and in spite of the appellant being specifically asked to provide the details pertaining to the creditor including the copy of income tax returns and the explanation for sources of credits no explanation or evidence was furnished by the appellant. The claim of the appellant that the amount was received from the creditor M/s Krrish Buildtech as advance for purchase of property is also not borne out from the facts on record. As per the copy of account of M/s Krrish Buildtech filed by the appellant, the total amount of advance was received back in two installments within a period of 2 days and 15 days. Moreover, it has been claimed that an amount of Rs.50,000/- was paid as interest. It is highly improbable that a person would give an advance of Rs. 1,20,00,000/- and take it back within a period of 2 days. There is no reason why the appellant would have paid any interest in the case the amount was merely an advance for the purpose of purchase of land from farmers. Moreover, as pointed out above, it is seen from the copy of bank account that the repayment of Rs.80,00,000/- is in the name of Harvinder Pal Singh and not in the name of Krrish Buildtech. Moreover, there is a cash deposit of Rs.80,00,000/- immediately prior to the issue of cheque of Rs.80,00,000/- in the name of Sh. Harvinder Pal Singh. No explanation or justification in this regard has been furnished by the appellant. The genuineness of the transaction has also therefore not been established.

15. The appellant has therefore failed to establish the identity of the creditor M/s Krrish Buildtech, the creditworthiness of the creditor and the genuineness of the transaction. These facts were brought to the notice of the appellant vide order sheet entry dated 12.03.2019 and the appellant was asked to explain why the amount of Rs.1,20,00,000/- may not be added to the income and income enhanced accordingly. The reply filed by the appellant dated 19.03.2019 has already been discussed above. No submission on the issue of enhancement was filed.

16. Keeping in view, the facts of the case, the addition made by the Assessing Officer amounting to 49,64,940/- is enhanced to Rs.1,20,00,000/-, Penalty proceedings u/s 271(1)(c) for furnishing inaccurate particulars of income are being initiated separately.”

2.4 The assessee is in appeal raising following grounds:

“1. That having regard to the facts and circumstances of the case, assumption of jurisdiction in reopening the impugned assessment and passing the impugned order u / s 143(3) / 147 is bad in law and against the facts and circumstances of the case and more so when statutory condition as stipulated u / s 147 to 151 have not been complied with.

2. That in any case and in any view of the matter, assumption of jurisdiction in reopening the assessment u / s 143(3) / 147 is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned reassessment order passed by Ld. AO on the ground that no notice u/s 143(2) has been issued/served upon the assessee as per law.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.49,64,940/- (i.e. 25% of Rs.1,98,59,760/-) made by Ld. AO on account of various cash/credit deposit in the bank account of assessee u/s 69 and has further erred in enhancing the said amount to the extent of Rs.1,20,00,000/- and that too by recording incorrect facts and findings and without appreciating/considering the submissions and evidences placed on record by the assessee and without issuing show cause notice in this regard and in violation of principles of natural justice.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming as well as enhancing the addition made by Ld. AO to the extent of Rs.1,20,00,000/- on account of various cash/credit deposit, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

6. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.

7. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. Heard and perused the record. The primary contention of learned AR was that AO and learned CIT(A) have both made assessment on different tangents. It was submitted that on the basis of deposit in the bank account in A.Y. 2011-12 the enhancement has been done in the present A.Y. 2010-11. Learned DR, however, supported the findings of learned CIT(A).

3.1 Taking into consideration the aforesaid discussion of the facts and circumstances it appears that because of failure of assessee to serve the notice on M/s Krrish Buildtech alias M/s Brahma City Pvt. Ltd., or to produce the said Company Directors to give their confirmations, learned CIT(A) seems to have drawn an impression that the said entity had nothing to do with the business of the assessee. Learned CIT(A) has rested its findings heavily on the fact that amounts which were received for the alleged transactions of purchasing land on account of M/s Krrish Buildtech was returned within a period of 2 days to 15 days itself. CIT(A) also did not find any justification in the fact that if it was an advance given to assessee for arranging land for agriculturists then for what reasons interest of Rs. 50,00,000/- was paid by the assessee to said M/s Krrish Buildtech.

3.2 Before us also, on behalf of assessee, no substantial evidence was produced to justify the transactions. The manner in which CIT(A) has discussed the receipt and payment by assessee and lack of certainty to whom the payments were actually returned. The non corroboration of claim of working as land aggregator with specific transactions taken up or abandoned on behalf of said builder M/s Krrish Buildtech, only justifies the conclusion of CIT(A) and same cannot be said to be based on mere suspicion. Admittedly assessee had sought assessment u/s 44AD with a claim of not maintaining any day to day record or regular books of account. That all the more required evidence of the alleged business activity as a land aggregator. Thus the findings of learned CIT(A) deserve no interference. Grounds raised have thus no substance. The appeal of the assessee is dismissed.

Order pronounced in open court on 14.05.2024.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
MP

Copy forwarded to:

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

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI