

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA Nos.2206 to 2207/Del/2023		
[Assessment Years : 2013-14 to 2014-15]		
Colourful Estates Pvt.Ltd. 14/18, First Floor East Patel Nagar New Delhi-110008. PAN-AAECC0407G	vs	DCIT Central Circle-1 Gurgaon
APPELLANT		RESPONDENT
Appellant by	Shri Rajat Jain, FCA & Shri Akshat Jain, FCA	
Respondent by	Shri Surender Pal, CIT DR	
Date of Hearing	24.10.2024	
Date of Pronouncement	17.01.2025	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeals have been filed at the instance of the assessee against the first appellate order dated 31.05.2023 passed by Ld. Commissioner of Income Tax (A)-3, Gurgaon [“Ld.CIT(A)”] u/s 250(6) of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 30.09.2016 under s. 154 and assessment order dated 29.03.2016 passed under s.143(3) of the Act pertaining to Assessment Years 2013-14 & 2014-15 respectively.

2. The issues being common, interlinked and similar and arising from a common order of CIT(A), both the captioned appeals of the assessee are being disposed of by this common order.

ITA No.2206/Del/2023 [Assessment Year : 2013-14]

3. We shall first take up the appeal of the assessee i.e. ITA No.2206/Del/2023 for the Assessment Year 2013-14 for adjudication purpose. The assessee has raised following grounds of appeal:-

1. *"That on the facts and circumstances of the case, Assessment Order passed u/s 153A(1)(b) of the Act by the Deputy Commissioner of Income Tax, Central Circle - 1, Gurgaon on 31.05.2023 for the assessment year 2013-14, is bad in law and liable to be quashed as no search action u/s 132 of the Act was carried out at the premises of the appellant company and no Panchnama was served to the appellant company.*
 2. *Without prejudice to the Ground of Appeal No. 1, the learned CIT(A) has erred both on facts & in law in sustaining addition to the extent of Rs. 50,38,500/- made by Ld. AO by disregarding the contention of the appellant that such addition was made on the basis of seized documents found during the course of search action u/s 132 of the Act carried out at the premises of third person and hence, outside the scope of proceedings u/s 153A of the Act.*
 3. *That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in sustaining addition to the extent of Rs. 50,38,500/- made on the basis of documents seized from the premises of third person without appreciating the fact that entries amounting to Rs. 45,38,500/- only pertains to the appellant which was duly explained and substantiated by the appellant with its books of account.*
 4. *That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in sustaining addition to the extent of Rs. 50,38,500/- out of which addition of Rs. 5,00,000/- was also made in the hands of Antriksh Developers & Promoters Pvt. Ltd. on the basis of same seized documents, is bad in law and liable to be deleted.*
 5. *That in the facts and circumstances of the case, the Ld. CIT(A) erred in law and on fact in sustaining addition to the extent of Rs. 26,69,63,300/- as against profit declared by the appellant of Rs. 20,14,669/- as per POCM, in arbitrary and mechanical manner.*
 6. *Without prejudice to the Ground of appeal No. 5, the Ld. CIT(A) erred in law and on fact in modifying and increasing addition to 26,69,63,300/- as against addition of Rs. 17,56,87,260/- made by the Ld. AO after rectification vide order dated 30.09.2016 without giving an opportunity u/s 251 of the Act of such enhancement which is gross violation of principle of natural justice.*
 7. *That the grounds of appeal are independent and without prejudice to each other."*
4. As per multiple grounds of appeal noted above, the assessee has essentially challenged (a) additions on account of undisclosed income attributable to certain entries discovered in the course of search under s.132 of the Act from the residential premises of Rakesh Kumar Yadav (RKY) who is

Director in the assessee company as well as in several other Real Estate Companies including Antariksh Developers and Promoters (P) Ltd. (Antarish Developers in short) (b) enhancement towards accrual of income under 'Percentage of Completion Method' ("PoCM") amounting to INR 17,56,87,260/- without any show cause notice or opportunity to the proposed enhancement under s. 251 of the Act.

5. The first issue concerns additions of INR 50,38,500/- towards undisclosed income based on entries found recorded in the diary seized from the residential premises is *inter-alia* under challenge.

6. The identical issue has been dealt with in length in preceding assessment years AYs 2011-12 & 2012-13 in ITA Nos.2204 & 2205/Del/2023 order dated 15.01.2025.

6.1 The assessee has explained that receipts and payments as noted in para 4.1 of the assessment order have been treated as undisclosed income by the AO arising from entries as recorded in the diary from the residential premises of RKY.

6.2 In the earlier AYs 2011-12 & 2012-13 also, similar additions were made by the AO. The Assessee primarily contends that most of the transactions relate to Golf View-I Project which is developed by Antariksh Developers. The transactions/entries recorded in the diary includes both projects i.e Golf View I as well as Golf View II and both projects are developed by different promoters. While Golf view I project is being developed by Antariksh Developers, Golf View project II is being developed by Colourful Estate i.e. assessee herein. The entries relatable to the assessee has already been accounted for prior to search and subjected to assessment. To support this claim, the assessee referred to Annexure 8-11 seized from the premises of the assessee which is in the nature of receipt of INR 5 Lakhs from certain parties which are clearly shown to be relatable to 'Golf View-I' and thereby that the aforesaid transaction relates to Antariksh Developers. The assessee submits that the transactions in the

impounded/seized material is not identifiable to Golf View-II being developed by Colorful Estate Pvt.Ltd. The assessee also contends that the assessment has been framed by the same Assessing Officer ("AO") for AY 2013-14 in the case of Antariksh Developers vide order dated 29.03.2016. The Additions have been made for some entries in that case also on substantive basis. The assessee thus relies upon the arguments placed in AYs 2011-12 while seeking appropriate relief on the issue.

6.3 In similar set of facts, the issue has been adjudicated by us in favour of the assessee in AY 2011-12 and followed in AY 2012-13. On appreciation of facts in similar circumstances, it was held therein that nature of entries are obscure and there are no evidence to relate such entries to the Assessee. The assessment of these entries has also been made in the hands of Antariksh Developers on substantive basis by the same AO. The diary having been found from the residential premises of the RKY who happen to director in many companies doing development of projects. Thus, in the absence of any adverse statement of RKY or any other tangible material found to implicate the assessee per se, the onus continued to rest on the revenue which was not discharged. The statutory presumption under s. 132(4A) and under s. 292C operates only against RKY from whose possession such entries were found. The presumption do not extend to the assessee co. in the absence of any concrete evidence. The assessee states that it had already included the entries relating to Golf View-II projects in its books. Some of the documents found in the course of search actually relate to Golf View-I project belonging to Antariksh Developers. The AO in the assessment order for AY 2013-14 in the case of Antariksh developers admits as a matter of fact that impugned entries include the entries belonging to that assessee which testifies the version of the assessee. Thus, making additions towards such entries without concrete proof is wholly justified and opposed to the facts available on record as held in the earlier years. In the absence of any adverse material having been brought against the assessee in relation to impugned entries by way of statement under s. 132(4) of the Act or

statements of any other stake holders or independent corroborative material, the additions cannot be sustained on the strength of suspicion or surmises. The factual position being similar, we do not wish to reiterate the process of reasoning adopted in earlier years. In consonance with the view expressed earlier year AY 2011-12, the additions made is held to be without legal foundation and thus cannot be countenanced in law. The additions sustained by the CIT(A) thus deserves to be cancelled and set aside. The AO is directed to reverse the impugned additions based on such entries. The Assessee thus gets relief on this score.

7. We now advert the other substantive challenge namely ; estimated additions on account of accrual of income under PoCM from real estate project undertaken by the assessee. The AO computed net profit deemed to have accrued from ongoing real estate project under development by applying PoCM for AYs 2011-12, 2012-13, 2013-14 & 2014-15. For quantification of estimated profits accrued for AY 2013-14 in question, the AO presumed 20% of advance received from potential customers against the sale of flats etc. as a reasonable estimate similar AYs 2011-12 & 2012-13. Based on advance received from customers, the AO computed addition of INR 44,67,91,678/- for the AY 2013-14 under consideration and added the same to the total income of the assessee. The AO, however, subsequently passed a rectification order under s. 154 of the Act to correct the mistake towards quantum of advance received from the customers. Based on the revised amount of advanced customers, the estimated additions were recomputed and reduced from INR 44,67,91,678/- to INR 17,56,87,260/-.

8. The assessee disputed the impugned estimated additions of INR 17,56,87,260/- stated to have accrued as per PoCM from the ongoing real estate project before the Ld.CIT(A).

8.1 The assessee made detailed submissions before the Ld.CIT(A) to counter the action of the AO.

8.2 To appreciate the background facts, the submissions made by the assessee before the Ld.CIT(A) by the assessee is summarized hereunder:-

8.2.1. The assessee company is engaged in the business of real estate and has only one project under development namely, Golf View –II, Noida. The total cost of project is INR 285.79 crores out of which construction cost stands at INR 176.36 crores and land cost stands at 109.43 crores. As prescribed in AS-9 promulgated by ICAI r.w. 'Guidance Note on Real Estate', the accrual of income will be recognized only when the prescribed conditions of PoCM laid by ICAI stands fulfilled. As per such Guidance Note, the revenue should be recognized under the percentage of completion method only when the events in all (a) to (d) below are fulfilled namely;

(a) all critical approvals necessary for commencement of the project have been obtained. These include, wherever applicable,

(i) Environmental and other clearances.

(ii) Approval of plans, designs, etc.

(iii) Title to land or other rights to development/construction.

(iv) Change in land use

(b) When the stage of completion of the project reaches a reasonable level of development? A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25 % of the construction and development costs.

(c) At-least 25% of the saleable project area is secured by contracts or agreements with buyers.

(d) At-least 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts.

8.2.2. It may be noted that the above all the conditions are threshold limits to be eligible to recognize revenue. In the said case, the appellant company has not achieved the level of 25% of construction and development cost & also not received the environment clearance certificate and other conditions of POCM is also not fulfilled, that is why the appellant company has not recognized the revenue during the financial years relevant to AYs 2011-12 & 2012-13.

8.2.3 However, the learned assessing officer has made ad-hoc addition on the estimation basis by taking 20% of advance received by the appellant without judicial application of mind that the revenue should be recognized only when the desired level of above-mentioned events are completed as per AS-9 and guidance note issued by the ICAI for the revenue recognition. When the desired level of event is not completed to enable revenue recognition then impugned

ad-hoc addition has no base and liable to be deleted. Merely because the revenue was not recognized by applying the percentage completion method for AYs 2011-12 & 2012-13, it cannot be said that the assessee could not have followed the accounting system of percentage completion method.

8.2.3. To substantiate its claim, the appellant company duly submitted the supporting documents like cost of project, advance received and year wise POCM working etc. vide letter dated 14/03/2016 and 16/03/2016 before the learned AO at the time of assessment proceedings. The learned assessing officer has accepted the total cost of project and advance received against the sale of property by taking the base of same while making the impugned adhoc addition from AY 2011-12 onwards and made the impugned addition itself on the basis of advance received; the revenue cannot be recognized on adhoc basis at the rate of 20% of advance received when the proper books of accounts is maintained and audited by the auditor. The impugned addition is irrelevant/baseless and without judicial application of mind.

8.2.4. Further there is no jurisdiction of the learned AO to apply the sub section 3 of section 145 without indicating which accounting standards as prescribed under said section has not followed by the appellant company. the said section prescribed only two accounting standards at that time ie.

- Accounting standard 1 for accounting policies and
- Accounting standard 2 for inventory valuation.

8.2.5. I thus find that the issue is to be decided in accordance with the provisions of section 145 of the Act and shows that the business income which is assessable under the Income Tax Act is to be computed in accordance with the consistent system of accounting followed by the assessee unless such system, of accounting is defective and / or from such system of accounting, profit cannot be deduced. The assessee has duly recognized the income and offered the same for taxation in the subsequent year from AY 2013-14 onwards as and when applicable as per the consistent system of accounting followed by the assessee. The working of same is already submitted before the learned AO vide letter dated 14/03/2016 in which the year wise POCM working for the four years under consideration (AYs 2011-12, 2012-13, 2013-14 & 2014-15) was given and duly shown that revenue being recognized as per POCM method and in the AY 2013-14, the revenue is first recognized as the all the conditions of POCM being satisfied from the AY 2013-14 and onwards. The learned assessing officer could not point out any error and passed the impugned assessment order ignoring the facts of the case and mentioned in the impugned order that the accounting standards as prescribed under section 145(3) of the Income Tax Act, 1961 has not followed by the appellant without pointing out the discrepancy. So, it is bad in law and liable to be quashed.

8.2.6. The assessee company has duly recognized the revenue as per guidance note on real estate issued by ICAI and AS-9 from AY 2013-14 and onwards. The detail of same is as under

AY	% of completion/ recognition	Revenue recognized	Total Revenue recognized
2013-14	51.64	1,35,55,22,090/-	1,35,55,22,090/-
2014-15	59.79	27,43,56,548/-	1,62,98,78,638/-
2015-16	69.55	54,59,54,799/-	2,17,58,33,437/-
2016-17	78.39	73,09,32,912/-	2,90,67,66,349/-
2017-18	88.82	64,96,95,687/-	3,55,64,62,036/-
2018-19	86.96	15,10,57,323/-	3,70,75,19,359/-
2019-20	87.73	41,41,62,265/-	4,12,16,81,624/-
2020-21	91.72	45,85,60,712/-	4,58,02,42,336/-
2021-22	94.76	20,01,09,651/-	4,78,03,51,987/-


It is clear from the above cited table; the assessee company has regularly recognized the revenue as per the guidance note and AS-9 from AYs 2013-14 onwards.

Considering entire conspectus of the case in the light of the peculiar facts and findings reached herein before in this case, it is evident that the action of learned assessing officer is bad in law by making the addition on estimation basis without judicial application of mind that the revenue cannot be recognized in AYs 2011-12 & 2012-13 due to non-compilation of conditions and non-achievement of desired level of POCM to recognize the revenue. So, the said impugned addition is liable to be deleted.

8.2.7 The assessee also placed the working sheet of PoCM till FY 2020-21 alongwith Audit Balance Sheet upto 2020-21 (as tabulated above), necessary approval from Competent Authority such as sanction letter, environmental clearance certificate, customer-wise details or areas sold upto FY 2020-21, Guidance Note of ICAI on real estate, working sheet of PoCM till FY 2013-14 and also calculation of WIP cost and Revenue recognition upto AY 2013-14. The assessee also contended that estimation of accrual of income on adhoc basis based on advance received from customers without taking cognizance of the corresponding expenses and without satisfaction of requirement of Guidance Note r.w.AS-9 is wholly unjustified.

8.2.8. The additional evidences filed by the assessee were forwarded to the AO for its comments. The AO in the remand proceedings examined the evidences placed and furnished its Remand Report which reads as under:-

Ph. No:- 0124-2450007
Email:- gurgaon.cit13@incometax.gov.in


OFFICE OF THE
COMMISSIONER OF INCOME TAX (APPEALS)-3
4th FLOOR, HSHDC BUILDING, UDYOG VIHAR, PHASE-V,
GURUGRAM

F. No. CIT (A)-3/GGN/2022-23/444-445 Date: 24.11.2022

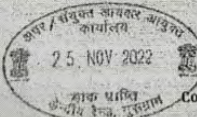
The Deputy Commissioner of Income Tax,
Central Circle-1,
Gurgaon

Sub: Remand proceeding in the case of M/s Colourful Estate Private Limited, 37,
Bhagat Singh Market, New Delhi-110001 (PAN: AAEC0407G and A.Y.s: 2011-12-
2014-15) -Reg-

Please find enclosed herewith submission of additional evidences dated 02.11.2022
received from the appellant with reference to the mentioned case.

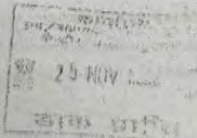
2. In this case, the appellant has furnished written submissions along with additional
evidences under rule 46A of Income Tax Rules, 1962 which are enclosed alongwith this
letter. It is required to go through the same and furnish report on the admissibility of the
additional evidences and as well as on the merits of the issues involved. I am hereby
authorising you u/s 250(4) of the Act to conduct necessary enquiries, if necessary, in order
to prepare the above report.

3. The above report alongwith results of enquiry, if any conducted, is to be sent within
one month of the receipt of this letter.



25 NOV 2022
Commissioner of Income Tax (Appeals)-3,
Gurgaon

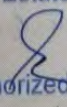
(Krishan Kumar)

Copy to the Jt. Commissioner of Income Tax, Central Range, Gurugram for information.


25 NOV 2022

(Krishan Kumar)



Colorful Estates Pvt. Ltd.

Authorized Signatory

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OFFICE OF ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1
7th FLOOR, HSHDC BUILDING, UDYOG VIHAR, PHASE-V, GURUGRAM
Ph.No.-0124-2450051, Fax-0124-2450097 Email id:-gurgaon.dcit.cen1@incometax.gov.in

F.No. ACIT/CC-1/GGM/2022-23/ 779 ✓

Dated: 13.02.2023

To,

The Commissioner of Income Tax (Appeals)-3,
Gurugram.

(Through Proper Channel)

Sir,

Subject: - Remand proceedings in the case of M/s Colorful Estate Private Limited, 37, Bhagat Singh Market, New Delhi (PAN: AAEC0407G and A.Y. 2011-12 to AY 2014-15) - reg.

Please refer to your letter F. No. CIT (A) -3/GGN/2022-23/444 dated 24.11.2022 in the above-mentioned case for AY 2011-12 to 2014-15.

2. In this connection, it is submitted that as per the directions of your good self, the undersigned carefully examined the information available on record as well the submissions and paper book filed by the assessee before your good self as well as assessment records in the case of the above-mentioned assessee.

3. Brief facts of the case for A.Y. 2011-12:

3.1 This is the case of Search, seizure and survey, which was conducted at residential as well as business/office premises of Antriksh Group on 05.02.2014. During this operation, various incriminating documents pertaining to assessee's company were found and seized. Jurisdiction of the assessee was transferred to this office vide order under Section 127 of the Income Tax Act, 1961 [in short "the Act", henceforth] passed by the Pr. Commissioner of Income Tax, Central, Gurugram on 09.11.2015.

3.2 The assessee company is engaged in business of development of real estate projects. After centralization of the case, in accordance with the provisions of Section 153A(1)(a) of the Act, notice under section 153A was issued on 30.11.2015 and was properly served upon the assessee.

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M/s Colorful Estates Pvt Ltd, Delhi.
AY 2011-12-2014-15

requiring to file its return of income for the year under appeal. In response to this notice, the assessee company submitted the copy of its return of income declaring total income of Rs. 23,870/-. Assessment under Section 153A(1)(b) of the Act was completed on 29.03.2016 by making addition of Rs. 6,14,69,315/-. Out of this addition, addition amounting to Rs. 4,39,62,275/- being 20% of Rs. 21,98,11,373/- (advances from customer + amount recognized in P&L a/c) was made as the assessee company had not recognized its income from development of project as per AS-9 while computing the income under POCM even on the disclosed income received against booking of flats etc in the project.

3.3 During the course of assessment proceeding, it was found that the assessee company has received the payment of Rs. 21,98,11,373/- during the year under consideration and returned a NIL income. Further the assessee company has not recognized any revenue as per accounting Standard (AS-9). Accordingly, notice u/s 143(2) along with questionnaire dated 08.01.2016 was issued to the assessee to explain the basis for accrual on income in respect of housing projects executed by the assessee at Gurgaon, Noida and Haridwar. Vide this questionnaire dated 08.01.2016, as per point No. (e), the assessee was specifically asked to furnish the elaborated notes on the policy regarding recognition of revenue in the books. The assessee was also asked to furnish the project wise and year wise revenue recognized into its book of accounts. In response to this, the assessee company submitted its reply stating that

"that the company has neither recognized any revenue nor expenditure of its real estate project undertaken in absence of percentage of completion of its projects to a significant level as management considered during the assessment year. However, the company has recognized the revenue for its project on percentage of completion basis in the subsequent years where project undertaken completed to a significant level as prescribed in the guidance note ICAI (Guidance note on revenue recognition in case of real estate transactions)."

3.4 Further, during the course of assessment proceedings, the assessee vide show cause notice dated 14.03.2016 was specifically asked to furnish the requisite documents/ information for purpose of computing the income under POCM related to each assessment year under consideration along with certificate of Engineer, which discloses the percentage of completion of work.

4.0 Brief facts of the case for the A.Y. 2012-13;

4.1 This is the case of Search, seizure and survey, which was conducted at residential as well as business/office premises of Antriksh Group on 05.02.2014. During this operation, various incriminating documents pertaining to assessee's company were found and seized. Jurisdiction of the assessee was transferred to this office vide order under Section 127 of the Income Tax Act,

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Authorized Signatory

Appeal No. 11132,11140,11137,11131/CIT(A)-3/GGN/2016-17
M/s Colorful Estates Pvt Ltd, Delhi.
AY 2011-12-2014-15

1961 [in short "the Act", henceforth] passed by the Pr. Commissioner of Income Tax, Central, Gurugram on 09.11.2015.

4.2 The assessee company is engaged in business of development of real estate projects. After centralization of the case, in accordance with the provisions of Section 153A(1)(n) of the Act, notice under section 153A was issued on 30.11.2015 and was properly served upon the assessee, requiring to file its return of income for the year under appeal. In response to this notice, the assessee company submitted the copy of its return of income declaring total income of Rs. 4,92,720/-. Assessment under Section 153A(1)(b) of the Act was completed on 29.03.2016 by making total addition of Rs. 18,13,06,756/-. Out of this addition, addition amounting to Rs. 14,69,10,013/- being 20% of Rs. 73,45,50,067/- (advances from customer + amount recognized in P&L a/c) was made as the assessee company had not recognized its income from development of project as per AS-9 while computing the income under POCC even on the disclosed income received against booking of flats etc in the project.

4.3 During the course of assessment proceeding, it was found that the assessee company has received the payment of Rs. 73,45,50,067/- from customers during the year under consideration and returned at NIL income. Further the assessee company has not recognized any revenue as per accounting Standard (AS-9). Accordingly, notice u/s 143(2) along with questionnaire dated 08.01.2016 was issued to the assessee to explain the basis for accrual on income in respect of housing projects executed by the assessee at Gurgaon, Noida and Haridwar. Vide this questionnaire dated 08.01.2016, as per point No. (c), the assessee was specifically asked to furnish the elaborated notes on the policy regarding recognition of revenue in the books. The assessee was also asked to furnish the project wise and year wise revenue recognized into its book of accounts. In response to this, the assessee company submitted its reply stating that

"that the company has neither recognized any revenue nor expenditure of its real estate project undertaken in absence of percentage of completion of its projects to a significant level as management considered during the assessment year. However, the company has recognized the revenue for its project on percentage of completion basis in the subsequent years where project undertaken completed to a significant level as prescribed in the guidance note ICAI (Guidance note on revenue recognition in case of real estate transactions."

4.4 Further, during the course of assessment proceedings, the assessee vide show cause notice dated 14.03.2016 was specifically asked to furnish the requisite documents/ information for purpose of computing the income under POCC related to each assessment year under consideration along with certificate of Engineer, which discloses the percentage of completion of work.

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Colorful Estates Pvt. Ltd.

Authorized Signatory

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Appeal No. 11132,11140,11137,11131/CIT(A)-3/GGN/2016-17
M/s Colorful Estates Pvt Ltd, Delhi.
AY 2011-12-2014-15

5.0 Brief facts of the case for the A.Y. 2013-14:

5.1 This is the case of Search, seizure and survey, which was conducted at residential as well as business/office premises of Antriksh Group on 05.02.2014. During this operation, various incriminating documents pertaining to assessee's company were found and seized. Jurisdiction of the assessee was transferred to this office vide order under Section 127 of the Income Tax Act, 1961 [in short "the Act", henceforth] passed by the Pr. Commissioner of Income Tax, Central, Gurugram on 09.11.2015.

5.2 The assessee company is engaged in business of development of real estate projects. After centralization of the case, in accordance with the provisions of Section 153A(1)(a) of the Act, notice under section 153A was issued on 30.11.2015 and was properly served upon the assessee, requiring to file its return of income for the year under appeal. In response to this notice, the assessee company submitted the copy of its return of income declaring total income of Rs. 6,25,720/-. Assessment under Section 153A(1)(b) of the Act was completed on 29.03.2016 by making total addition of Rs. 45,18,30,438/-. Out of this addition, addition amounting to Rs. 44,67,91,678/- being 20% of Rs. 223,39,58,390/- (advances from customer + amount recognized in P&L a/c) was made as the assessee company had not recognized its income from development of project as per AS-9 while computing the income under POCM even on the disclosed income received against booking of flats etc in the project.

5.3 During the course of assessment proceeding, it was found that the assessee company has received the payment of Rs. 223,39,58,390/- from customers during the year under consideration and returned at NIL income. Further the assessee company has not recognized any revenue as per accounting Standard (AS-9). Accordingly, notice u/s 143(2) along with questionnaire dated 08.01.2016 was issued to the assessee to explain the basis for accrual on income in respect of housing projects executed by the assessee at Gurgaon, Noida and Haridwar. Vide this questionnaire dated 08.01.2016, as per point No. (c), the assessee was specifically asked to furnish the elaborated notes on the policy regarding recognition of revenue in the books. The assessee was also asked to furnish the project wise and year wise revenue recognized into its book of accounts. In response to this, the assessee company submitted its reply stating that

"that the company has neither recognized any revenue nor expenditure of its real estate project undertaken in absence of percentage of completion of its projects to a significant level as management considered during the assessment year. However, the company has recognized the revenue for its project on percentage of completion basis in the subsequent years where project undertaken completed to a significant level as prescribed in the guidance note ICAI (Guidance note on revenue recognition in case of real estate transactions)."

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M/s Colorful Estates Pvt Ltd, Delhi.
AY 2011-12-2014-15

5.4 Further, during the course of assessment proceedings, the assessee vide show cause notice dated 14.03.2016 was specifically asked to furnish the requisite documents/ information for purpose of computing the income under POCM related to each assessment year under consideration along with certificate of Engineer, which discloses the percentage of completion of work.

6.0 Brief facts of the case for the A.Y. 2014-15:

6.1 This is the case of Search, seizure and survey, which was conducted at residential as well as business/office premises of Antriksh Group on 05.02.2014. During this operation, various incriminating documents pertaining to assessee's company were found and seized. Jurisdiction of the assessee was transferred to this office vide order under Section 127 of the Income Tax Act, 1961 [in short "the Act", henceforth] passed by the Pr. Commissioner of Income Tax, Central, Gurugram on 09.11.2015.

6.2 The assessee company is engaged in business of development of real estate projects. After centralization of the case, in accordance with the provisions of Section 153A(1)(a) of the Act, notice under section 153A was issued on 30.11.2015 and was properly served upon the assessee, requiring to file its return of income for the year under appeal. In response to this notice, the assessee company submitted the copy of its return of income declaring total income of Rs. 1,97,450/-. Assessment under Section 153A(1)(b) of the Act was completed on 29.03.2016 by making addition of Rs. 15,80,89,348/- being 20% of Rs. 79,04,46,738/- (advances from customer + amount recognized in P&L a/c) was made as the assessee company had not recognized its income from development of project as per AS-9 while computing the income under POCM even on the disclosed income received against booking of flats etc in the project.

6.3 During the course of assessment proceeding, it was found that the assessee company has received the payment of Rs. 79,04,46,738/- from customers during the year under consideration and returned at NIL income. Further the assessee company has not recognized any revenue as per accounting Standard (AS-9). Accordingly, notice u/s 143(2) along with questionnaire dated 08.01.2016 was issued to the assessee to explain the basis for accrual on income in respect of housing projects executed by the assessee at Gurugram, Noida and Haridwar. Vide this questionnaire dated 08.01.2016, as per point No. (c), the assessee was specifically asked to furnish the elaborated notes on the policy regarding recognition of revenue in the books. The assessee was also asked to furnish the project wise and year wise revenue recognized into its book of accounts. In response to this, the assessee company submitted its reply stating that

"that the company has neither recognized any revenue nor expenditure of its real estate project undertaken in absence of percentage of completion of its projects to

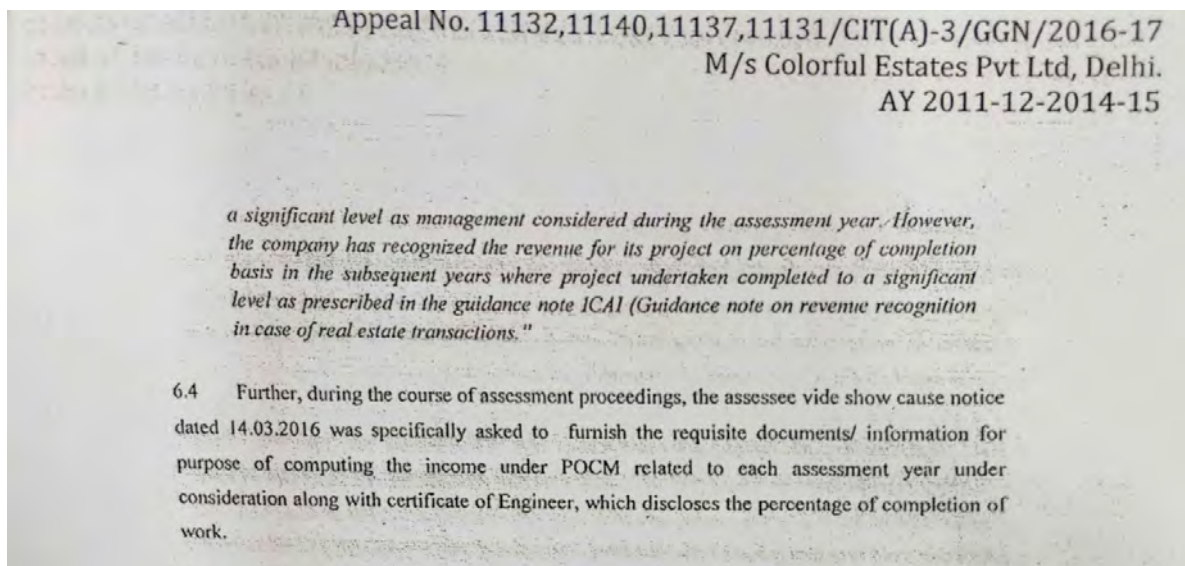
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Colorful Estates Pvt. Ltd.

Authorized Signatory

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8.2.9 In the re-joinder to the Remand Report, the assessee pointed out before the Ld.CIT(A) that AO has duly accepted that the assessee has submitted all requisite details to substantiate the working of PoCM. It was pointed out that the assessee has already recognized Revenue from AY 2013-14 onwards in question as the conditions for applicability of PoCM as per the Guidance Notes and AS-9 was satisfied from AY 2013-14 onwards. The assessee has also submitted that the detailed working of Revenue recognition under PoCM alongwith numerous documents as

- a) MAP duly approved by Noida Authority
- b) Copy of registered lease deed
- c) Consortium agreement
- d) Year wise ledger of land cost
- e) Sanction letter
- f) Environment Clearance Certificate
- g) NOC Fire
- h) POCM computation sheet
- i) Copy of invoices b/ bills of construction expenses
- j) Ledger account of parties of purchase exceeding Rs 1 Crore
- k) Self-speaking Letter of the PCIT for stay of demand.

8.2.10. It was contended before the CITA) that that all critical approvals necessary for commencement of the project has been obtained in the FY 2012-13 relevant to AY 2013-14 and consequently the income accrued as per PoCM

has been offered for taxation. The critical approvals such as environmental and other clearances approvals, title of land and other rights to develop/construction and change of land used etc. were ready in FY 2012-13. Coupled with this PoCM is applicable when the stage of completion of project reaches a reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25% of the construction and development cost. Besides, 25% of the saleable project area need to be secured by contract or agreement with buyers. Likewise atleast 10% of the total revenue as per the agreement of sale are realized. All these conditions are threshold limits to be eligible to recognize the Revenue. It is for this reason that due to non-satisfaction of the threshold conditions, the Revenue was not recognized in AYs 2011-12 & 2012-13. However, in AY 2013-14, the mandatory conditions to enable the assessee to recognize the Revenue as per PoCM was satisfied and therefore, the Revenue from FY 2012-13 relevant to AY 2013-14 was recognized by considering all the advances from the customers and cost incurred till the end of respective FYs. The Environmental Clearance Certificate which is critical for carrying on the construction was obtained by the assessee from the Directorate of Environment, Uttar Pradesh for Antariksh Developers, Golf View-II Project during the FY 2012-13 relevant to AY 2013-14. Prior to the environmental clearance, the assessee has incurred expenditure majorly on purchases of cement and steel bars which fact is demonstrable from the purchase bills. The labour work incurred prior to environmental clearance is very nominal and incurred to the extent essentially to the security of the project as per the norms of environmental authority. Hence, the assessee has done only those construction activities on the said project which was permitted prior to environmental clearance otherwise one of the reasons for not recognizing the Revenue in AYs 2011-12 & 2012-13. Some other parameters of the Guidance Notes were also not fulfilled. The assessee thus submitted that the AO has not taken the cognizance of the cost incurred and invoked the PoCM method entirely on whims and fancies without taking cognizance of the pre-requisites for applicability of PoCM method for Revenue recognition.

9. The Ld.CIT(A) in eventual analysis of facts broadly noted as under:-

- (i) There is no rational basis for applying adhoc NP rate of 20% of the total advances received during various AYs from 2011-12 to 2014-15.
- (ii) The assessee is following PoCM for Revenue recognition in the books of accounts in accordance with Accounting Standard 9 r.w. Guidance Note issued by ICAI on real estate. During the AY 2011-12 threshold limit of construction @ 25% has not been achieved. An environmental clearance for the project was not received at the end of AY 2012-13. Therefore, no revenue for AYs 2011-12 & 2012-13 has been rightly recognized as the basic addition for Revenue recognition on the basis of PoCM were not fulfilled.

(iii) The assessee has recognized Revenue in AYs 2013-14 & 2014-15 in accordance with AS-9 r.w. Guidance Note in the books of accounts/ITR. The Revenue recognized in the P&L Account of the respective AYs are:-

AY	Revenue recognized in the profit and loss account (in Rs.)
2011-12	NIL
2012-13	Nil
2013-14	135,55,22,090/-
2014-15	27,43,56,548/-

9.1 Based on the observations in the Remand Report, the Ld.CIT(A) noted that the assessee has recognized Revenue from AY 2013-14 onwards. The Ld.CIT(A) further noted that the AO in the Remand Report after examination of facts of the case on the issue of recognition of Revenue as per PoCM method, has not given any adverse finding for AYs 2011-12, 2013-14 & 2014-15 in the given set of facts.

9.2 However, in respect of AY 2012-13, it was mentioned that though the construction cost has been incurred in excess of 25%, no Revenue has been recognized in AY 2012-13. In response to AY 2012-13, the Ld.CIT(A) observed that Environmental Clearance Certificate was received on 04.03.2013 and the labour work expenses were quite nominal. For security purposes, the majority of construction expenses towards purchase of steel and cement.

10. In the final analysis for AYs 2011-12 to 2014-15, the Ld.CIT(A) ultimately gave its finding as under:-

(a) The assessee has followed PoCM as per Guidance Note on accounting to real estate transactions issued by ICAI. As per the material on record, the expenditure of construction carried upto end of AY 2011-12 was 7.95% which was less than threshold of 25% as specified in the same note of the ICAI. Thus the plea of the assessee for not recognizing the Revenue for AY 2011-12 is acceptable.

(b) As per the material available on record, environmental clearance certificate for the project was obtained during AY 2013-14 and therefore, no recognition of Revenue for AY 2012-13 cannot be faulted although expenditure

incurred on construction of project was 30.57% which exceeded the threshold of 25%. The Ld.CIT(A) also observed that major construction cost towards purchase of cement and steel and no actual cost of construction has been carried in the project upto AY 2012-13.

(c) From the record, it is found that for AYs 2013-14 & 2014-15, the assessee has recognized revenue of INR 135.55 crores and 27.43 crores in the audited P&L Account based on PoCM method. The AO in the Remand Report has not made any adverse comments in respect of claim of the assessee that Revenue has been recognized by the assessee for the said project based upon PoCM for the AYs 2013-14 & 2014-15.

11. The Ld.CIT(A) thus granted complete relief from the additions towards accrual of income under PoCM owing to inapplicability of AS-9 & Guidance Note in so far AYs 2011-12 & 2012-13 are concerned. The Ld.CIT(A) also reversed the additions made by the AO for AY 2013-14 based estimating being 20% of advances received from customers. The Ld.CIT(A) however observed that on independent verification of PoCM workings made by him during the appellate proceedings for AYs 2013-14 & 2014-15. It was observed that the assessee has to compute the construction expenditure as per Guidance Note. The Ld.CIT(A) observed that proportionate project expenditure works out to INR 109.03 crores whereas the assessee has claimed 135.73 crores. Based on some other alleged errors, the Ld.CIT(A) alleged that assessee under-stated the profits from real estate under PoCM by INR 26,69,63,300/- qua income returned on this score. The income declared by the assessee as per PoCM working in its ROI was thus enhanced by INR 26,69,63,000/-.

12. As regards AY 2014-15 is concerned, the Ld.CIT(A) observed that the assessee had made a disclosure of INR 55 Lakhs under s. 132(4) of the Act on account of income as per AS-9 for AY 2014-15. However, the assessee has disclosed profits of INR 15,23,019/- only in its ITR for AY 2014-15. The Ld. CIT(A) accordingly confirmed the addition to the extent of INR 39,76,985/-

being the differential between the amount declared under s. 132(4) & amount returned in the ITR.

13. In essence, the Ld.CIT(A) reversed the additions made by AO on revenue recognition under PoCM method for AYs 2011-12 & 2012-13 whereas the income declared by PoCM method for AYs 2013-14 & 2014-15 were enhanced.

14. We have carefully considered the rival submissions and perused the material available on record.

14.1. It is the case of the assessee that the assessee has duly recognized the Revenue on fulfillment of conditions if Guidance Note on Real Estate issued by ICAI and AS-9 from AY 2013-14 and onwards, the details of which as emerges from the order of the Ld. CIT(A), is noted under:-

AY	% of completion/ recognition	Revenue recognized	Total Revenue recognized
2013-14	51.64	1,35,55,22,090/-	1,35,55,22,090/-
2014-15	59.79	27,43,56,548/-	1,62,98,78,638/-
2015-16	69.55	54,59,54,799/-	2,17,58,33,437/-
2016-17	78.39	73,09,32,912/-	2,90,67,66,349/-
2017-18	88.82	64,96,95,687/-	3,55,64,62,036/-
2018-19	86.96	15,10,57,323/-	3,70,75,19,359/-
2019-20	87.73	41,41,62,265/-	4,12,16,81,624/-
2020-21	91.72	45,85,60,712/-	4,58,02,42,336/-
2021-22	94.76	20,01,09,651/-	4,78,03,51,987/-

14.2. The Ld. Counsel for the assessee thus submits that the Revenue has been recognized based on PoCM for AYs 2013-14 & 2014-15 and also in the other subsequent AYs and thus there is no escapement of any revenue received from development project from taxability. The entire exercise is thus revenue neutral and no loss has been eventually suffered by the Revenue because of the recognized method under PoCM has been applied by the assessee.

14.3. It is further case of the assessee that the Ld.CIT(A) has rightly deleted the rectified addition of INR 17,56,87,260/- made by the AO based on estimation being 20% of advances received by the assessee on the ground that such estimation is not permissible and contrary to PoCM method. The Ld.CIT(A) has

however having deleted the basis of additions made by the AO, independently enhanced the income by the assessee by INR 26,69,63,300/- for AY 2013-14. The Ld.CIT(A) has made such enhancement unilaterally without confronting the assessee on such revision of profitability determined by assessee under PoCM by issuing any show cause notice which is a mandatory requirement of law. In the absence of show cause notice issued under s. 251 of the Act, the enhancement made by the Ld.CIT(A) is vitiated in law in view of the judgements referred in the cases of (i) *Jagdish Prasad Sharma vs ITO, Ward-1(3), Ghaziabad* [2020] 115 taxmann.com 162 [Delhi ITAT]; (ii) *Mandeep Singh Anand vs ACIT* [2024] 159 taxmann.com 1225 [Delhi ITAT]; (iii) *Naresh Sunderlal Chug vs ITO, Ward-8(1), Pune* [2018] 93 taxmann.com 485 [Pune ITAT]; and (iv) *Vason Engineers Ltd. vs The ACIT, Range-1, Pune* [2022] ITA no.403/PUN/2015 [Pune ITAT] order dated 22.09.2022. The Ld. Counsel also submits the working of PoCM was duly provided to Ld. AO & Ld.CIT(A). The AO has not disputed the nuanced working of revenue recognition under PoCM in the remand proceedings.

14.4. The assessee submits that in view of the aforesaid judgements and many more other judgements on mandatory nature of show cause notice before enhancement, it was incumbent upon the Ld. CIT(A) to follow the explicit requirement of mandatory nature embodied in section 251(2) of the Act. Failure to issue show cause notice has thus vitiated the impugned enhancement at the threshold.

14.5. Be that it may and in the alternative, the assessee contends that the Ld.CIT(A) himself has accepted the working of PoCM method in AY 2014-15 which in turn is based on the working of PoCM in AY 2013-14 and a sequel to working of AY 2013-14. Thus the Ld.CIT(A) himself in one year is making the enhancement and in other year accepts the working of the assessee. The action of the Ld.CIT(A) is thus mutually contradictory in two assessment years. The assessee has applied the PoCM method based on scientific working and the AO

himself has not put any adverse remark in the remand proceedings against the working of PoCM presented to him and analysed by him.

15. On appraisal of the facts and circumstances and plea raised on behalf of the assessee, we find palpable merit in the case built on behalf of the assessee towards lack of justification for enhancement of income recognized by the assessee under PoCM insofar as AY 2013-14 is concerned.

15.1. On perusal of the submissions made on behalf of the assessee and on perusal of the order of Ld.CIT(A), it appears self-evident that the enhancement for the AY 2013-14 in question was carried out by the Ld.CIT(A) without giving any formal information to the assessee in this regard and without communicating the basis for arriving at the said figure of enhancement to the assessee. The assessee was totally clueless on proposed enhancement in the course of first appellate proceedings. Such approach of the Ld.CIT(A) is contrary to statutory protocol as well as law codified in s.251(2) of the Act. It is trite that the enhancement of declared income, if any, can be considered and advanced only if an opportunity is given for that purpose as held in *Gedore Tool P.Ltd.vs CIT [1999] 238 ITR 268 (Delhi)*. Similar view has been expressed by the Co-ordinate Benches in the decisions cited on behalf of the assessee.

15.2. Pertinently, the enhancement proceedings are intrinsically a serious exercise undertaken independently by the Ld.CIT(A). Hence for making any comments adverse to the assessee, it is bounden duty of the Ld.CIT(A) to follow due process of law before coming to his own conclusions on unverified facts and before making comments thereon. The Ld.CIT(A) is bound under the explicit provisions of s. 251(2) of the Act to confront the assessee with material evidence, if any, in his possession. The statutory obligations in the case of enhancement are far wider and heavier. As alleged, the impugned enhancement has apparently been made without giving notice to the assessee and without confronting him with his process of reasoning to doing so. The impugned enhancement are thus wholly unsustainable in law at the threshold.

15.3. Besides, the AO has not controverted the working of PoCM in the Remand Report pointed out on behalf of the assessee and admitted by the Ld.CIT(A) himself. Thus, the responsibility on the Ld.CIT(A) is on a far more higher pedestal to make departure. Furthermore, the Ld.CIT(A) himself has not disputed the PoCM working in the subsequent AY 2014-15 which is in continuity of the PoCM working provided by the assessee for AY 2013-14. Thus, one year cannot be disturbed in isolation to other AYs without showing reasonable basis for doing so.

15.4. Furthermore, the assessee claims to have eventually subjected the entire revenue receipts to taxation over the period of construction. Hence there is no eventual loss of Revenue over a period of time. Coupled with, the AO was also satisfied with working of PoCM dispute by Ld.CIT(A) leading to enhancement. Thus, when the facts and circumstances are seen in the holistic manner, enhancement carried out by the Ld.CIT(A) fails on legal ground of absence of opportunity as well as on factual matrix. The enhancement made also fails owing to tax neutrality spanning over the years of realization of sale proceeds and also contradictory stand in AY 2013-14 vis-à-vis 2014-15. The enhancement made by the Ld.CIT(A) thus stands quashed.

16. The additions made by AO towards revenue recognition based 20% of advance received from customers as well as enhancement made by Ld.CIT(A) on this score thus do not survive.

ITA No.2207/Del/2023 [Assessment Year : 2014-15]

17. We now advert to the additions of INR 39,76,985/- under challenge for the AY 2014-15 in question. It is the case of the assessee that the addition of INR 39,76,985/- based on disclosure of INR 55 Lakhs under s. 132(4) of the Act on account of revenue recognition as per PoCM is without any basis. The assessee has not made any disclosure in the statement recorded under s. 132(4) of the Act. The Ld.CIT(A) while setting aside and cancelling the estimated addition of INR 15,80,348/- being 20% of the Revenue receipt from

customers has made a fresh addition by way of enhancement of INR 55 Lakhs leading to net enhancement of INR 39,76,985/- in the light of alleged statement made under s. 132(4) of the Act. Such action has been taken without issuing any enhancement notice required in law under s. 251(2) of the Act. The impugned net enhancement of INR 39,76,985/- is thus unsustainable in law.

18. We find substantial merit in the plea of the assessee. The additions of INR 39,76,985/- based on so-called statement under s. 132(4) of the Act, is in the nature of enhancement for which there is no mention of issuance of any show cause notice to the effect. It is also trite that mere statement under s.132(4) is not conclusive and only raises presumptions against the assessee. The assessee is not estopped from demonstrating the factual incorrectness in the statement recorded on facts. The assessee has provided working of Revenue recognition under PoCM which has not been faulted by the AO in the remand proceedings. Thus, the income offered by the assessee becomes sacrosanct and based on material available on record and cannot be ordinarily disturbed without plausible reasons. Furthermore, the identity of persons giving statement under s. 132(4) to this effect is not known. The corroboration is otherwise necessary to support the enhancement which is also not present. Some bald statement of deponent of the statement *ipse facto* cannot be a legally sound basis to make such enhancement, that to, without issuing any show cause notice and providing reasonable opportunity mandated under s. 251(2) of the Act. The action of Ld.CIT(A) is apparently devoid of legally sound basis and cannot be countenanced in law.

19. The impugned additions/enhancement carried out by the Ld.CIT(A) is thus set aside and cancelled.

20. In conclusion, the action of Ld.CIT(A) reversing the additions made by the AO on revenue recognition is affirmed whereas, the enhancement of income by the Ld.CIT(A) is cancelled.

21. In the result, both appeals of the assessee are allowed.

Order pronounced in the open Court on 17th January, 2025.

Sd/-

Sd/-

(YOGESH KUMAR US) JUDICIAL MEMBER	(PRADIP KUMAR KEDIA) ACCOUNTANT MEMBER

** Amit Kumar **

Copy forwarded to:

- Appellant
- Respondent
- CIT
- CIT(Appeals)
- DR: ITAT

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