



\$~23 & 24

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 710/2023

PR. COMMISSIONER OF INCOME TAX –  
CENTRAL -1

.....Appellant

Through: Mr. Anant Mann, JSC, Mr.  
Pranjal Singh & Mr. Abhishek  
Anand, Advs. for Mr. Ruchir  
Bhatia, SSC.

versus

EMAAR MGF CONSTRUCTION PVT.  
LTD.

.....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with  
Mr. Aniket D. Agrawal, Mr.  
Deepesh Jain & Mr. Abhishek  
Singhvi, Advs.

24

+ ITA 745/2023

PR. COMMISSIONER OF INCOME TAX –  
CENTRAL -1

.....Appellant

Through: Mr. Anant Mann, JSC, Mr.  
Pranjal Singh & Mr. Abhishek  
Anand, Advs. for Mr. Ruchir  
Bhatia, SSC.

versus

EMAAR MGF CONSTRUCTION PVT.  
LTD.

.....Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with  
Mr. Aniket D. Agrawal, Mr.  
Deepesh Jain & Mr. Abhishek  
Singhvi, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**



**ORDER**  
**13.01.2025**

%

1. The present appeals had come to be admitted on 27 May 2024 on the following question of law:

“2.1 Whether the Tribunal is justified in law and on facts in deleting the addition of INR 157.33 crores [ITA 710/2023] and INR 51.6 crores [ITA 745/2023] by taking resort to the finding that the AO has not rejected the books of account, though the AO has thoroughly discussed the issue before making the addition?”

2. In terms of the detailed order passed on that date, we had taken note of the conclusions which had come to be recorded by the **Assessing Officer**<sup>1</sup> while framing the order of assessment and which stood reflected in paragraph 17.6 which reads as follows:

"17.6 Further, the assessee has shown sundry creditors at Rs. 99,68,32,820/- out of which sale & distribution is appearing at Rs. 188,18,134/-. This amount do not bear the name of the parties to whom payable and appears to be more like 'provisions of expenditure', which has not yet incurred hence cannot be allowed and expenditure to this extent will be disallowed and added to the income of the assessee.

➤ In view of the above, the accounts maintained & submitted by the assessee is not correct and, therefore, liable to be rejected u/s. 145 of the I.T. Act, as it has claimed bogus expenses to enhance the cost and to reduce the profit. The above transactions clearly depict the malafide intent of the assessee to enhance the cost and evade the tax. Therefore, the books of accounts submitted by the assessee are such from which the true and correct profit cannot be deduced and, therefore, rejected.”

3. However, and as we read the order of the **Income Tax Appellate Tribunal**<sup>2</sup> dated 26 December 2019 and which is impugned before us today in the present appeals, we find that in paragraph 34 it has held and observed as follows:

“34. Principally we find that the addition has been made solely

---

<sup>1</sup> AO

<sup>2</sup> Tribunal



based on the Shunglu Committee Report. The object of the Shunglu Committee was to determine, if the purchase of 333 additional flats by DDA was according to the norms/ rules and had not caused any loss to the exchequer. Its object was not to determine the cost or expenditure to the assessee, indeed, the assessee was never called to the proceedings of the Shunglu Committee, nor was any input / clarification taken from the assessee. It can also be find that another government agency, the Labour Commissioner, has accepted the cost of the assessee for the purpose of levy of labour cess on the CGV project. What is primarily required is to prove the inflation in the cost of construction is to determine, investigate and prove whether any expenditure claimed in the P&L account or said to be incurred for construction are bogus or inflated. This inflation could be either on payment of sub-contractors or cost of materials. The Issue of the purchase of materials is also dealt in this order while dealing with the ground taken up by the assessee relating to purchase of material. There is no dispute about the difference between the estimated specifications and executed specifications. Hence, incurring of additional expenditure over and above the contract given to the ACIL can be accepted. Further, after the departure of ACIL from the execution of the work, the same has been completed by resorting to the completion by other agencies. The increase in the cost of cement and steel cannot be ruled out. The Assessing Officer ultimately held and calculated the difference in POCM based on the budgeted cost and the payments made to EMLL. Nowhere, the method of accounting standard followed by the assessee has been disputed, in fact, no grounds could be brought out by the Assessing Officer to alter the percentage shown by the assessee except the document of estimated cost. The Assessing Officer held that the estimated cost of the project computed by the assessee at Rs. 1597.43 crores was higher by approximately Rs.270 crores on account of cost of construction computed at Rs.1027 crores. The AO's conclusion that the total construction cost cannot exceed Rs. 752.35 crores and hence total estimated project cost worked out to Rs.1322.71 crores against Rs.1597.43 crores estimated by the assessee cannot be accepted. This reduction in estimated expenditure consequently resulted in working of POCM at 69.32% instead of 57.40%. This resulted in the absolute figure of Rs.87.97 crores rise in the estimated income of the assessee which is not without any tangible basis and hence cannot be accepted. The AO's contention that the negligible profit declared by the assessee warrants the alteration in POCM is also cannot be accepted. We also rely on the judgment of CIT Vs Vikram Plastics 239 ITR 161 (Guj.) wherein it has been held that, where no discrepancies or defects pointed out in the books of account and further that they were regularly maintained and also on the finding that there was no material brought on record to establish that purchases or expenses were inflated or sales suppressed. The profits declared by the



assessee cannot be altered. Similarly, the Hon'ble Delhi Court in the case of Winner Constructions Pvt. Ltd. in ITA 796/2011 held that low gross profit or net profit may be a ground are reason to conduct detailed and thorough investigation and verification but on that stand alone the profits cannot be rejected. System of accounting adopted by the assessee cannot be rejected on the grounds that gross profit disclosed by the assessee was low. It is also a fact and as submitted by the revenue that the assessee had constructed 230,689.33 sq. mt. against the approved built up area of 205,140 sq. mt. In that case, it is a natural corollary that the cost incurred for construction of the plots would be more than the estimated cost. The fact that the DDA purchased the flats for Rs.11,000 per sq. ft. and sold in auction @ Rs.24,000 per sq. ft. has been ignored by the Assessing Officer and took a fixed stance that the cost of construction cannot be more than RSs2875 per sq. ft. The factor such as increase in the input cost, exit of the main contractor, change in the specification are not considered by the Assessing officer. In the instant case, there has been no evidence of inflation of purchases, the Assessing Officer has not rejected the books of account, the accounts have been accepted but altered the profits based on the estimated project cost. This cannot be said to be legally tenable. The re-computation and the consequent addition made by the Assessing Officer is hereby directed to be deleted.”

4. It becomes ex facie apparent and evident that the Tribunal has proceeded on the basis that the AO had not rejected the books of account and since the accounts would be liable to have been duly accepted, alterations on the basis of estimated cost would not be legally tenable. It is thus apparent that the judgment rendered by the Tribunal is rendered perverse and contrary to the record.

5. We accordingly answer the question as posited in the negative and in favour of the Commissioner. The appeal shall consequently stand allowed. The order of the Tribunal dated 26 December 2019 is hereby quashed and set aside. The matter shall in consequence stand remanded to the Tribunal on the aforesaid question for rendering a decision afresh.

6. By way of abundant caution, we clarify that we were constrained to interfere with the ultimate order rendered by the



Tribunal solely on the grounds aforementioned. Consequently, all rights and contentions of respective parties on merits are kept open.

**YASHWANT VARMA, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**JANUARY 13, 2025/kk**