

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.8095/Del/2018
Assessment Year: 2014-15

ITO Ward- 16 (4) New Delhi	Vs	M/s. Midway Apartments Pvt. Ltd. C-8/1A, Vasant Vihar, New Delhi-110057 PAN No.AAECM2913P
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. M.K. Pandey, Sr DR
Respondent by	Sh. R. S. Singhvi, CA Sh. Rajat Garg, CA

Date of hearing:	04/07/2023
Date of Pronouncement:	04/07/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-6, Delhi dated 12.10.2018 pertaining to A.Y.2014-15.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.1.70 crores made on account of unexplained cash credit u/s. 68 of the Act.

3. Representative of both the sides were heard at length. Case records carefully perused.

4. Briefly stated that the facts of the case are that during the assessment proceedings the AO noticed the assessee has shown liability of Rs.1.70 crores as advance received against sale of land in previous year. The AO noticed that this liability was adjusted against the 0% optionally convertible debenture issued to M/s. Tiara Developers Pvt. Ltd. The assessee was asked to provide the details of the same. The assessee explained the transaction but did not file the details.

5. Invoking the provisions of section 68 and relying upon various judicial decisions the AO made the addition of Rs. 1.70 crores u/s. 68 of the Act.

6. Assessee agitated the matter before the CIT(A) and explained that the provisions of section 68 are not applicable as the assessee has not received any loan / advance during the year under consideration. It was pointed out that Rs. 1.70 crores is the opening balance.

7. After considering the facts and the submissions the CIT(A) was convinced that opening balance cannot be added u/s.68 during the year under consideration.

8. However, the CIT(A) directed the AO to take necessary action in the year in which the amount of Rs.1.70 crores was received and deleted the addition from the year under consideration.

9. Pursuant to the directions of the CIT(A) assessment of assessment year 2013-14 was reopened to verify the genuineness of the credit of Rs.1.70 crores. The AO framed the assessment u/s. 147/143(3) of the Act vide order dated 20.02.2019 bearing DIN -20131146222 at Nil income.

10. Considering the facts of the case in totality we do not find any error or infirmity in the findings of the CIT(A). The appeal filed by the revenue is dismissed.

11. Decision announced in the open court on 04.07.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .07.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi