

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

ITA No. 952/MUM/2012
(Assessment Year : 2007-08)

The ACIT, Cen. Cir.13,
Old CGO Annexe Building,
Room No.1103, 11th Floor,
Maharshi Karve Marg,
Mumbai 400 020
Vs.

... Appellant

M/s. Giriraj Developers,
Plot No.43 A/B, Sector -20,
Kharghar, Navi Mumbai 410 210.
PAN:AAFFG 4761R

.... Respondent

Appellant by : Shri Maurya Pratap
Respondent by : Shri Rushabh Mehta

Date of hearing : 17/05/2016
Date of pronouncement : 17/05/2016

ORDER

PER MAHAVIR SINGH, J.M:

This appeal by Revenue is arising out of the order of CIT(A)-37,Mumbai in Appeal No. CIT(A)-37/IT-29/ACCC-13/11-12 dated 4/11/2011. Assessment was framed by ACIT, Cen. Cir.-13, Mumbai under section 153C of the Income Tax Act, 1961 (in short 'the Act') for the assessment year 2007-08 vide his order dated 30/12/2008.

2. At the outset, Ld. Counsel for the assessee stated that this penalty levied by the Assessing Officer and deleted by CIT(A) against which Revenue has preferred this appeal, will not survive because the Tribunal in ITA No.5067/Mum/2009 for assessment year 2007-08 has quashed the assessment proceedings vide order dated 24/02/2016 vide para 8.2.5 as under:-

8.2.5 In the case on hand, it is an admitted fact recorded in the orders of assessment that the incriminating documents in the form of diaries were found during the survey proceedings undertaken in the business premises of the assessee firm. It is therefore clear that the concerned documents/diaries did not emanate from out of seizures made in the course of search action. In this factual matrix of the case on hand, we find that the essential condition of section 153C of the Act is not fulfilled. Further, the Assessing Officer vide letter dt. 16/10/2015 has admitted that the satisfaction note for initiating the proceedings u/s 143(3) r.w.s.153C of the Act is not available on record., but has stated that it was the same Assessing Officer for initiation of the proceedings u/s 143(3) r.w.s 153C of the Act. Therefore, we find that the twin conditions (i) that the incriminating documents should have been found during the course of search action under section 132 of the Act and (ii) that the Assessing Officer should have recorded his satisfaction are not fulfilled in this case. Further, the CBDT, Circular No: 24/2015 dt. 31/12/2015 has made its applicability to pending litigation as well. In view of the above factual and legal matrix of the case, we uphold the ground raised that the orders of assessments for Asst. years 2006-07 and 2007-08 passed u/s 143(3) r.w.s. 153C of the Act are without jurisdiction.

In such circumstances, Ld. Counsel for the assessee stated that the penalty proceedings will not survive and the appeal of Revenue deserves to be dismissed on this count only. On the other hand, Ld. Sr. D.R. fairly agreed to the decision.

3. We find that the quantum assessment has been quashed by the Tribunal in ITA No.5067/Mum/2009 vide order dated 24/02/2016.

Since the quantum assessment is quashed, the penalty will not survive.
Accordingly, the appeal of the Revenue is dismissed.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17/05/2016.

Sd/-
(ASHWANI TANEJA)
ACCOUNTNAT MEMBER
Mumbai, Dated 17/05/2016

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai