

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 3337/MUM/2014
Assessment Year: 2006-07**

The DCIT- 8(1), Room No. 260A, 2 nd Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. Benhour Regency Estates Pvt. Ltd., C-5, Raj Nagar Co-op. Hsg. Soc. Ltd., S.V.Road, Jogeshwari (W), Mumbai- 400 102. PAN:- AABCB8406H
(Appellant)		(Respondent)

Appellant by : Shri. Sanjeev Jain.
Respondent by : Shri. Vimal Punmiya.

Date of Hearing: 06/06/2016
Date of Pronouncement: 08/06/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against order dated 27/02/2014 passed by the Ld. CIT(Appeals)-16 Mumbai for the Asst. Year 2006-07.

2. The revenue has challenged the impugned order on the following effective grounds:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rendering as infructuous, the A.O's order dated 24/02/2010 giving effect to the order dated. 18/02/2010 passed u/s 263 by CIT-8, Mumbai, on the basis of order dated 21/02/2014 of the Hon'ble ITAT, Mumbai, in ITA No. 2186/Mum/2010 in*

assessee's case, setting-aside the order u/s 263 dated 21/02/2014 of CIT-8, Mumbai, without appreciating that the order of the Hon'ble ITAT is being challenged before the Hon'ble High Court of Bombay."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in rendering as infructuous, the A.O's order dated 24/02/2010 giving effect to the order dated. 18/02/2010 passed u/s 263 by CIT-8, Mumbai, on the basis of order dated 21/02/2014 of the Hon'ble ITAT, Mumbai, without appreciating the fact that Department is filling appeal u/s. 260A before the Hon'ble High Court, against the order dated 21/02/2014 of the Hon'ble ITAT, Mumbai, in ITA No. 2186/Mum/2010 in assessee's case, setting-aside the order u/s 263 dated 21/02/2014 of CIT-8, Mumbai."

3. In the present case the assessee filed its return of income declaring the total income of Rs. 2,76,521/- after claiming deduction u/s 80IB(10) of the Income Tax Act, 1961(in short the Act.) amounting to Rs. 3,75,74,742/-. The return was processed and tax liability was computed u/s 115JB of the Act. The Ld. CIT issue show-cause notice u/s. 263 of the Act, on the ground that since the land was not registered in the name of the assessee, the assessee is not entitled for deduction u/s 80IB(10) of the Act. Accordingly, the Ld. CIT directed to the A.O withdraw the deduction u/s 80IB (10). In compliance thereof, the A.O disallowed the deduction and re-assessed the total income of the assessee at Rs. 3,78,51,260/-. The revision order was challenged by the assessee before the Tribunal. The Tribunal after hearing the parties set aside the order of the CIT passed u/s 263 of the Act, and dismissed the department's appeal. The present appeal has been filed by the revenue against the impugned order passed by the Ld. CIT(A) in appeal filed by the assessee challenging the

assessment order passed by the AO under section 143(3) read with section 263 of the Act.

4. At the outset, the Ld. Authorised Representative (AR) submitted that in this case, since the ITAT has set aside the order of the CIT passed u/s 263 of the Act, the order of A.O giving the effect of order u/s 263 of the Act, does not survive. The Ld. Departmental Representative did not dispute the facts.

5. We have heard the rival contentions and perused the material placed before us. We notice that the co-ordinate bench has allowed the appeal of assessee, ITA No. 2186/M/2010 filed against order dated 18/02/2010 passed by the Ld. CIT u/s 263 of the Act for the A.Y. 2006-07 holding that the power of revision exercised by the CIT is not in accordance with law. Hence, the order passed by the Ld. CIT(A) against the assessment order passed under section 143(3) read with section 263 of the Act does not have legs to stand on its own. Accordingly, we uphold the order passed by the Ld. CIT(A) and dismiss the grounds of revenue's appeal.

6 In the result appeal filed by the revenue for A.Y. 2006-07 is dismissed.
Order pronounced in the open court on 8th June, 2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 08/06/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila