

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

AND SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. Nos.1310 & 1311/Mum/2014

(निर्धारण वर्ष / Assessment Years:2002-03 & 2006-07

M/s. Growmore Leasing & Investments Ltd., 32, Madhuli, Dr. Annie Besant Road, Mumbai-400 018	बनाम/ Vs.	The ACIT, CC-31, Aayakar Bhavan, Mumbai-400 020
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आयकर अपील सं/ I.T.A. No.1312/Mum/2014

(निर्धारण वर्ष / Assessment Years:2008-09

M/s. Growmore Research & Asset Management Ltd., 32, Madhuli, Dr. Annie Besant Road, Mumbai-400 018	बनाम/ Vs.	The ACIT, CC-31, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG 4397D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Dhaval Shah
प्रत्यर्थी की ओर से/Respondent by:		Dr. P. Daniel

सुनवाई की तारीख / Date of Hearing : 06.10.2015

घोषणा की तारीख /Date of Pronouncement :16 .10.2015

आदेश / ORDER

PER N.K. BILLAIYA, AM:

These three appeals by the assessee are preferred against three different orders of the Ld. CIT(A)-40, Mumbai pertaining to Assessment years 2002-03, 2006-07 & 2008-09. The grievance of the assessee is same in all the captioned appeals therefore they were

heard together and disposed of by this common order for the sake of convenience and brevity.

2. At the very outset, the Ld. Counsel for the assessee stated that he is not pressing ground No. 1 in all the captioned appeals, the same is dismissed as not pressed.

3. The issues raised vide ground No. 2 are identical in all the captioned appeals though quantum may defer and it relates to the disallowance of interest expenditure.

4. The Ld. Counsel for the assessee brought to our notice the decision of the Tribunal in assessee's own case for assessment years 2007-08, 2009-10 and 2010-11 in ITA Nos. 5135, 5136/M/2012 and 2151 /M/2013. It is the say of the Ld. Counsel that on identical set of facts, the Tribunal has restored the issue to the file of the Ld. CIT(A) for fresh consideration as per the directions of the Tribunal.

6. The Ld. Departmental Representative fairly conceded to this.

7. We have carefully gone through the order of the Tribunal (supra). The Tribunal at para 5 & 6 of its order has held as under:

“We have carefully perused the orders of the authorities below. While disposing the ground relating to the disallowance of interest, we find that the Ld. CIT(A) has followed the findings given in the case of Eminent Holdings Pvt. Ltd. We find that the Tribunal in the case of Eminent Holdings in ITA Nos. 2139, 2140 and 2141/Mum/2013 have followed the decision of the Tribunal given in common group case of Hitesh S. Mehta at para 2.3 of the order and restored the matter to the file of the Ld. CIT(A) for fresh adjudication. Respectfully following the findings of the Co ordinate Bench, we restore this issue to the files of the Ld. CIT(A) for fresh adjudication after giving reasonable opportunity of being heard to the assessee.

Before closing this issue, the Ld. Counsel for the assessee pointed out that the Ld. CIT(A) has held that the issue of interest expenditure is pending before the Hon'ble Special Court. It is the say of the Ld. Counsel that the proceedings in which the said issue of interest was issued by the custodian have been already concluded which fact has already been recorded by the Ld. CIT(A) in the impugned order. We, therefore, direct the Ld. CIT(A) to consider this fact while deciding the issue afresh. The Ld. CIT(A) may also direct for the taxing of income in the hands of the recipient (family members) in accordance with the method of accounting followed by them and as per the provisions of the law. Ground No. 4 is treated as allowed for statistical purpose”.

Respectfully following the decision of the Co-ordinate Bench, we restore this issue to the file of the Ld. CIT(A). The Ld. CIT(A) is directed to decide the issue afresh in the light of the directions given hereinabove. Ground No. 2 of the captioned appeals is treated as allowed for statistical purpose.

8. The next grievance relates to the charging of interest u/s. 234A, 234B and 234C of the Act. The levy of interest is mandatory though consequential. We, accordingly direct the AO to levy interest as per the provisions of the law.

ITA No. 1312/M/2014- A.Y. 2008-09

9. The additional grievance of the assessee relates to the calculation of Book Profit u/s. 115JB of the Act.

10. In our considered opinion, this ground is consequential to our decision given for ground No. 2 (supra). This ground is accordingly disposed of.

11. Ground No. 3 of ITA No. 1312/M/2014 is treated as allowed for statistical purpose.

12. For similar reason ground No. 5 is also restored to the file of the AO to be decided in the light of the findings given for ground No. 2 & 3 (supra).

13. In the result, the captioned appeals are treated as allowed for statistical purpose.

Order pronounced in the open court on 16th October, 2015

Sd/-
(SANJAY GARG)

Sd/-
(N.K. BILLAIYA)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16th October, 2015

व.नि.स./ Rj , Sr. PS

आदेश की 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