

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, एफ, मुंबई ।

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

**श्री संजय गर्ग, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.4945/Mum/2011
Assessment Year: 2007-08**

Valley Resort Development Co. P. Ltd. R.No.90, Diamond Manison, 4 th Floor, 366/368 Kalbadevi Rd. Mumbai-400002	बनाम/ Vs.	ITO 4(3)(3) 6 th Floor, R. No.637, Aayakar Bhavna, M.K. Rd. Mumbai-400020
(Appellant)		(Revenue)
P.A. No.AABCV0618D		

Assessee by	Shri R.M. Jain (AR)
Revenue by	Shri Santosh Mankoskar (DR)

सुनवाई की तारीख / Date of Hearing :	24/11/2015
आदेश की तारीख /Date of Order:	6/01/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

The present appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals)-8,

Mumbai {(in short 'CIT(A)}}, dated 24.03.2011 for the assessment year 2007-08, decided against the assessment order passed by the Assessing Officer (in short 'AO') u/s 144 of the Act, on the following grounds:

The following grounds of appeal are independent of and without prejudice to one another. The learned commissioner of Income tax (Appeal)-8 Mumbai (hereinafter referred to CIT(A)) erred in confirming the following additions & Disallowances while framing the assessment order u/s 144 of the Income tax act 1961, (hereinafter referred to as the act).

The appellant submits that on the facts and in the circumstances of the case, the following additions and disallowances made by the ITO are not warranted and the ITO be directed to be deled.

- 1. Learned CIT (A) has erred in allowing the assessment completed by ITO U/s. 144 of the I.T. act 1961.*
- 2. Learned CIT (A) has erred to rejection of the accounts of the assessee u/s. 145 of the I.T. act 1961.*
- 3. Learned CIT (A) has erred to confirming the addition made by learned ITO amounting to Rs.38,920/- an account of entry fees.*
- 4. Learned CIT (A) has erred to confirming the addition made by learned ITO amounting to Rs.3,50,152/- on account of expenses.*
- 5. Learned CIT (A) has erred to confirming the addition made by learned ITO amounting to Rs.2,56,000/- on account of salary expenses.*

6. Learned CIT (A) has erred to confirming the addition made by learned ITO amounting to Rs.22,89,800/- on account of Unexpanded cash audit.

7. Learned CIT (A) has erred to confirming the addition made by learned ITO amounting to Rs.2,00,000/- on account of Misc. Income on account of sales of land.

8. Learned CIT (A) has erred to confirming the claim of exempted dividend income amounting to Rs. 1,48,9751- which was allowed by the learned ITO in the remand order.

2. During the course of hearing, arguments were made by Shri R.M. Jain, Authorised Representative (AR) on behalf of the Assessee and by Shri Santosh Mankoskar, Departmental Representative (DR) on behalf of the Revenue.

3. The assessee has also filed an additional ground with regard to u/s 143(2) which was withdrawn during the course of hearing by the Ld. Counsel.

3.1. During the course of hearing, it was submitted by the Ld. Counsel that the assessment in this case was completed *ex parte*. The perusal of the assessment order shows that various additions/disallowance has been made by the AO, without application of mind. He showed us various instances wherein incorrect facts have been recorded by the AO while making the additions/disallowance. It was further submitted that an application was filed before Ld. CIT(A), requesting obtaining remand report of the AO on the additional evidences filed by

the assessee, but it was rejected by the Ld. CIT(A). It was further submitted that *ex-parte* order of the AO was wrongly upheld by the Ld. CIT(A). On the other hand, Ld. DR supported the orders of the lower authorities.

3.2. We have gone through the orders of lower authorities and paper book filed by the assessee. It is noted by us that assessment order was framed *ex-parte* by the AO. It is further noted that there is contradiction in the facts as narrated in the assessment order and as shown to us by the Ld. Counsel on the basis of documents in the paper book. For example it has been mentioned by the AO in the assessment order that value of land sold during the year has not been shown in the books. It has been shown by the Ld. Counsel that land has been duly recorded in the books of accounts. There were other incidences of the similar nature. It is further noted by us that Ld. CIT(A) also refused to consider additional evidences filed by the assessee. Thus, we find that justice has not been given to this case, and issues have been decided by both of the lower authorities without proper application of mind. In view of these facts and circumstances and with a view to render justice to this case, we find it appropriate to send all the issues raised by the assessee in the grounds before us, back to the file of the AO to be decided afresh after giving adequate opportunity of hearing to the assessee. The assessee shall also extend requisite cooperation to the AO by providing details and documents as may be required by the AO and as may be considered appropriate by the assessee, as per law and facts.

Thus, all the issues raised by the assessee before us are sent back to the file of the AO for fresh adjudication.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 6th January, 2016.

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 6 /01/2016

Patel, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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