

आयकर अपीलीय अधिकरण, मुंबई “सी” खंडपीठ
Income-tax Appellate Tribunal -“C”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member
आयकर अपील सं./I.T.A./4689/Mum/2016,निर्धारण वर्ष /Assessment Year: 2009-10

Apurva Natvar Parikh & Co.Pvt.Ltd. 96, Chembur Mankhurd Link Road Shivaji Nagar, Mumbai-400 043. PAN:AAACN 2937 Q	Vs.	ACIT-Central Circle-7(1) Room No.653, 6th Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Rajat Mittal-CIT-DR
Assessee by: Shri Madhur Agarwal-AR

सुनवाई की तारीख / **Date of Hearing:** **01.02.2018**

घोषणा की तारीख / **Date of Pronouncement:** **27.04.2018**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार- PER RAJENDRA, AM-

Challenging the order dated 10/05/2016 of the CIT (A) -49,Mumbai, the assessee has filed the present appeal.Assessee-company engaged in the business of warehousing,construction activities and running a club,filed its return of income on 30/09/2009, declaring total income at Rs. 7.06 crores.The Assessing Officer (AO) completed the assessment u/s.143(3)of the Act,on 30/12 / 2011,assessing its income at Rs. 9.87 crores.

Brief Facts

2.A revisionary order,as per the provisions of section 263 of the Act, was passed by this CIT, Central-IV,on 19/11/2013,wherein the assessment completed by the AO was held to be erroneous and prejudicial to the interest of revenue with regard to the issue relating to treatment of receipt of one-time membership entrance fee of Rs. 2.51 crores. The assessee had claimed that the entrance fee was a capital receipt and the then AO had accepted the claim made by the assessee while passing the original order.In his revisionary order, the CIT set aside the assessment order with a direction to the AO to tax the entrance fee after affording a reasonable opportunity of hearing.In pursuance of revisionary order, the AO completed the assessment, u/s. 143 (3) r.w.s.263 of the Act, on 24/02/2015, determining the income of the assessee at Rs .12.39 crores.

3. Aggrieved by the above order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). After considering the available material, he referred to the order of the tribunal for the AY.s 2006-07 to 2008-09 (ITA/2146 and 2147/Mum/2009 and ITA 2283/ Mum/2011, dated 20/11/2015) and directed the AO to tax 1/25th part of one-time member -ship fees in each year, over the period of 25 years, rather than taxing the entire amount in the AY. 2009-10.

4. In the meanwhile the assessee filed an appeal before the tribunal challenging the revisionary order of the CIT, dated 19/11/2013. It was brought to our notice that the order passed by the him, u/s. 263 of the Act, was quashed by the Tribunal vide its order dated 24/10/2017 (ITA/ 444/ Mum/2014, AY.2009-10). We are reproducing the operative part of the order of the Tribunal and that reads as under:

“8. A perusal of the order passed by the CIT indicated that the assessment order passed by the Assessing Officer was cancelled on the ground that the Assessing Officer has not made proper enquiry and verification in respect of the issue as discussed above. This, in our considered opinion, cannot be sufficient ground for cancelling the assessment. While making the assessment order, it is the satisfaction of the Assessing Officer who made the enquiry and it should be touchstone of assessment order passed by him. No cogent material or evidence was brought to our knowledge by the Ld. DR which may prove that view taken by the Assessing Officer in the case of the assessee was unsustainable in law. Therefore, we are of the view that the order passed by the CIT is illegal and without jurisdiction. If the order passed by the CIT is sustained then this will permit the illegality to continue and the subsequent action is carried out on the illegal order is also illegal per se.

9. In the result, the appeal filed by the assessee is allowed.”

As the revisionary order of the CIT has been declared illegal, so, the consequential order of the AO passed u/s. 143(3) r.w.s 263, dtd., would not survive. Therefore, reversing the order of the FAA, we decide the effective ground of appeal in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 27th April, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 27 अप्रैल, 2018 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 27.04.2018.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

2. Respondent /प्रत्यर्थी

- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
5.DR “C ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**