

आयकर अपीलिय अधिकरण “B” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 3584/Mum/2017

(निर्धारण वर्ष / Assessment Year 2009-10)

Bibhuti B. Dasgupta (HUF) Plot No.285-286, Lileema, 12 th Road, Khar (W), Mumbai- 400 052	Vs.	The Asst. Commissioner of Income Tax-19(1) Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAAHG1175J		

अपीलार्थी की ओर से / Appellant by : Shri Divyesh Fotaria, AR

प्रत्यर्थी की ओर से / Respondent by : Shri DG Pansari, DR

सुनवाई की तारीख / Date of hearing:	18.10.2018
घोषणा की तारीख / Date of pronouncement :	29.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-34, Mumbai [in short CIT(A)], in appeal No. CIT(A)-34/ACIT 19(1)/IT-354/14-15 vide order dated 06.02.2017. The order under section 154 of the Act, 1961 (hereinafter the



Act) vide order dated. 15.09.2014 has been issued by Asst. Commissioner of Income Tax, Circle 19(1), Mumbai.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in refusing to rectify the error in regard to enhancement of sale consideration from ₹ 19.51 crores to ₹ 19.92 crores. For this assessee has raised the following ground No. 2: -

“2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in refusing to rectify pertaining to enhancement of the sale consideration, from Rs. 19.51 crores to Rs. 19.92 crores, made by him while framing the assessment.

2.2 It is submitted that in the facts and the circumstances of the case, and in law, such error was required to be rectified.”

3. At the outset, the learned Counsel for the assessee stated the facts that the assessee filed its return of income for A.Y. 2009-10 on 20.08.2009 declaring income of Rs. 17,46,41,557/-. The case of the Assessee was selected for scrutiny and order was passed under section 143(3) of the Act on 26.12.2011 by making addition of Rs.93,83,585/- to long term capital gains and assessing the income of the Assessee at Rs. 18,40,25,162/-. The Assessee preferred an appeal before the CIT(A) on 11.01.2012 against the order under section 143(3) of the Act passed by the A.O. During the pendency of appeal before the CIT(A), show cause notice u/s 263 dated 15.05.2012 was issued by the CIT and subsequently, order was passed u/s 263 of the Act on 23.07.2012 by setting aside the order of A.O dated 26.12.2011 passed u/s 143(3) of the Act and directing



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the A.O to pass fresh order. Against this order, the Assessee preferred an appeal before the Tribunal, being in ITA No. 5129 /M/2012. The CIT(A) dismissed the appeal filed against original assessment order vide order dated 11.02.2013 by considering it as infructuous on the ground that the assessment had already been set aside u/s 263 by the Administrative Commissioner on this issue. Against this, the Assessee filed appeal before the Tribunal on 02.08.2012 being ITA No. 1435/M/2014. The AO, then, passed order under section 143(3) r.w.s 263 on 21.03.2014 giving effect to the order of the CIT under section 263 of the Act by enhancing the assessed income to Rs. 21,02,96,393/-. The Assessee filed rectification application dated 26.03.2014 before the A.O. requesting to rectify certain mistakes apparent in the order dated 21.03.2014 passed under section 143(3) r.w.s 263 of the Act. The A.O rejected the rectification application and passed order on 25.09.2014 under section 154 of the Act. The Assessee preferred an appeal before the CIT(A) against the order u/s 154 of the Act. The CIT(A) vide order dated 06.02.2017 partly confirmed the action of the AO. The Assessee preferred an appeal before the Tribunal against the said order, being ITA No. 3584/M/2017, which is the present appeal. In the meantime, both the earlier appeals, against the CIT(A) order in original assessment and against the order u/s 263 were consolidated for hearing before the Tribunal. The Tribunal quashed and set aside the order u/s 263 vide order dated 05.02.2018 (in ITA No. 5129/M/2012) and set aside the CIT(A) order passed under section 250 of the Act (in ITA No. 1435/M/2014).

4. Under the circumstances, since the appeal against the order under section 263 has been allowed by the Tribunal, quashing the order under section 263, the order under section 143(3) r.w.s 263 does not survive. In turn, the present appeal before the Tribunal emanating from the order



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under section 154 of the Act against such assessment order will become infructuous and academic and dismissed.

5. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 29-10-2018.

आदेश की घोषणा खुले मे दिनांक 29-10-2018 को की गई ।

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 29-10-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

Assistant Registrar
ITAT, MUMBAI