

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, HON'BLE VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**S. A.- 646-47/Del./2018
ITA no. 7651-52/Del/2017)
A.Y. 2006-07, 2007-08**

M/s. Best City Projects India Pvt. Ltd.	vs	ITO, Ward-4(3), New Delhi
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**S. A.- 648-49/Del./2018
ITA no. 7653-54/Del/2017)
A.Y. 2007-08, 2008-09**

M/s. Best City Realtors India Pvt. Ltd.	vs	ITO, Ward-4(3), New Delhi
Appellant		Respondent

Assessee by	Sh. Ved Jain, Adv., Sh. Ashish Goyal, CA, Sh. Kislaya Prashad, Adv.
Revenue by	Sh. G. Johnson, Sr. DR

Date of Hearing	09.10.2018
Date of Pronouncement	07.01.2019

ORDER

PER BENCH:

All these four appeals have been preferred by the assessee and relate to two assessment years 2006-07 and 2007-08 in the

case of Best City Projects India Pvt. Ltd. and two assessment years 2007-08 and 2008-09 in the case of Best City Realtors India Pvt. Ltd.

2. The brief facts of the case/s are that search and seizure operation was carried out in the business premises of the Best Group of cases on 15.09.2008. Subsequently, assessment orders u/s 153A of the Income Tax Act, 1961 (hereinafter called the 'Act') were passed. Another search and seizure operation u/s 132 of the Act was carried out on 28.03.2011 at the business premises of the Best Group and assessments u/s 153C of the Act were completed on 28.03.2013 in the following cases:

Sl. No.	Name of the Assessee	A.Y.
1	Best City Infrastructure India Ltd.	A.Y. 2005-06 to A.Y. 2008-09
2	Best City Developers India Pvt. Ltd.	A.Y. 2007-08 to A.Y. 2008-09
3	Best City Projects India P. Ltd.	A.Y. 2006-07 to A.Y. 2007-08
4	Best City Realtors India P. Ltd.	A.Y. 2007-08 to A.Y. 2008-09

2.1 Against the above assessment orders passed u/s 153C of the Act vide order/s dated 28.03.2013, the assessee/s filed appeals before the Ld. CIT (Appeals)- 31, New Delhi and challenged the initiation of proceedings by the Assessing

Officer (AO) under section 153C of the Act as well as the additions on merits.

2.2 The Ld. CIT (Appeals), vide order/s dated 11.03.2014 confirmed the initiation of the proceedings under section 153C and thus decided the legal issue against of the assessee in the cases/s of Best City Infrastructure Ltd. and Best City Developers India Pvt. Ltd. Since, there was no relief from the Ld. CIT (A) in the cases of these two assesseees, they further appealed before the ITAT and ITAT, vide order dated 08.02.2017, deleted the addition made by the AO and the order of the ITAT was subsequently confirmed by the Hon'ble Delhi High Court vide order dated 30.10.2017.

2.3 However, in the case of the two assesseees, now in appeal before us, the learned CIT (Appeals) decided the issue in favour of the assessee by holding that since there was no incriminating material found during the course of search belonging to the assessee, there could not be any addition in the hands of the assessee and, thus, the legal issue was decided in favour of the assessee. However, on merits the learned CIT (A) confirmed the addition in the hands of the assessee/s. Since the legal issue was decided in favour of the

assessee, no further appeal/s were preferred by the assesseees now in appeal before us and no appeals were filed by the revenue also.

2.4 Thereafter, the assesseees filed applications before the AO for giving the appeal effect requesting the AO to give effect to the order/s of the Ld. CIT (A).

2.5 However, the AO disposed of the said applications vide order dated 27.04.2017 stating that the order/s by the Ld. CIT (A) had been passed in the favour of revenue and thus the effect to the application/s of the assessee companies cannot be granted and that the demand/s raised by the AO remained as they were.

2.6 Aggrieved, the captioned assesseees approached the Ld. CIT (A) once again challenging the action of the AO in denying the grant of appeal effect to the assessee/s. However, the Ld. CIT (A) dismissed the appeals by simply stating that the appeals filed by the assessee/s were not maintainable under the provisions of section 246A of the Act.

2.7 Now the captioned assesses are before the ITAT challenging the act on the Ld. CIT (A) in holding that the orders of the AO denying grant of appeal effect were not

appealable orders.

3.0 The Ld. Authorised Representative submitted that that the appeal effect order is appealable under section 246A of the Act because the order passed by the Assessing Officer giving effect to the decision of the appellate authority is as much an assessment order as the one passed by him u/s 143 of the Act. It was further submitted that the appeal-effect order passed by the AO in contravention of the order of the Ld. CIT (A) is an appealable order and the appeal lies before the Ld. CIT (A). It was submitted that the Ld. CIT (A) had erred in holding that the impugned orders were not appealable orders. It was prayed that the appeals of the assessee/s be allowed.

4.0 In response, the Ld. Departmental Representative submitted that appropriate directions may be issued to the Ld. CIT (A) to reconsider the appeals of the assessee.

5.0 We have heard the rival submissions and have also perused the relevant material on record. The facts in the appeals before us are not in dispute. It is undisputed in the cases of the above two assessees who are now appeal before us that the Ld. CIT (A) has decided the appeals in favour of

the assessee/s by holding that since there was no incriminating material found during the course of search and seizure which could be said to be belonging to the assessee/s, there cannot be any additions in the hands of the assessee/s. On the other hand, the Ld. CIT (A) has confirmed the additions on merits. This is contrary to the settled legal position that if the appeals are allowed on the legal ground, then additions on merits cannot be sustained. The Ld. CIT (A) has, thus, given contradictory findings in the same appellate order. Further, it is also settled law that an order giving effect to the appellate order is also appealable u/s 246A of the Act. The Hon'ble Bombay High Court in the case of Caltex Oil Refining (India) Ltd. vs. CIT reported in 202 ITR 375 (Bombay) had an occasion to consider this issue and it was held by the Hon'ble Bombay High Court as under:

"So far as the first submission, which relates to the nature of an order passed by the Income-tax Officer in consequence of orders of the appellate authorities with a view to giving effect to the directions contained therein, is concerned, it is difficult to hold that such an order is an administrative order. The power of the Income-tax Officer is to make assessment under section 143 or 144 of the Act. It is that assessment which is the subject-matter of appeal. The

appellate authority, on an appeal against an order of assessment, has power to confirm, reduce, enhance or annul the assessment or to set aside the assessment and refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the directions given by such authority (section 251). Evidently the effect of an appellate order is that the order either stands confirmed, reduced or enhanced or it stands annulled or set aside. In the case of confirmation, reduction or enhancement, the original order of assessment stands modified to the extent of the directions given by the appellate authority. In the case of annulment the order becomes non est. In case an order is set aside, the authority has to start the entire process afresh and make a fresh order of assessment complying with the directions given by the appellate authority. It is thus clear that what remains as a final order after giving effect to the orders of the appellate authorities is an order of assessment under Section 143 or 144. It cannot be anything else."

5.1 A similar view was taken by the Hon'ble Delhi High Court in the case of CIT Vs. John Tinson & Co. Pvt. Ltd. in ITA 418/2009 wherein the Hon'ble Delhi High Court has referred to and approved the said judgment of the Hon'ble Bombay High Court. Therefore, respectfully placing reliance on the judgment of the Hon'ble Bombay High Court in the case of Caltex Oil Refining (India) Ltd. vs. CIT (supra), we hold

that the Ld. CIT (A) was legally incorrect in holding that the appeal effect order is not appealable and, therefore, his action of dismissing the assessee's appeals *in limine* cannot be upheld. Accordingly, we restore all the four appeals to the file of the Ld. CIT (A) to reconsider the assessee's appeals which have been filed against the order of the AO giving effect to the order of the Ld. CIT (A). The Ld. CIT (A) shall re-adjudicate the appeals and pass the orders in accordance with law after giving due opportunity to the assessee to present its case.

6.0 In the result, all the four appeals of the assessee/s accordingly stand allowed for statistical purposes.

7.0 Since the captioned appeals have been heard and allowed for statistical purposes, the captioned stay applications become *in fructuous* and they are dismissed as having become *in fructuous*.

8.0 In the final result, all the four appeals of the assessee/s stand allowed for the statistical purposes whereas all the four stay applications stand dismissed.

Order pronounced in the open court on 07.01.2019

Sd/-

**(G.D.AGRAWAL)
VICE PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 07 .01.2019

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	07.01.2019
Date on which the typed draft is placed before the dictating Member	07.01.2019
Date on which the typed draft is placed before the Other Member	07.01.2019
Date on which the approved draft comes to the Sr. PS/PS	07.01.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	07.01.2019
Date on which the fair order comes back to the Sr. PS/PS	10.01.2019
Date on which the final order is uploaded on the website of ITAT	10.01.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant	

Registrar for signature on the order	
Date of dispatch of the Order	