

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

I.T.A. No.5967/M/2017
(Assessment Year: 2007-08)

ACIT-14(3)(2) Room No.482(1), 4 th Floor, Aayakar Bhavan, M.K. Marg, New Marine Lines, Mumbai- 400020.	Vs.	ShivShaiPunarvasanPrakalp Ltd. Griha Nirman Bhavan, Bandra (E), Mumbai-400051.
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AACCS1590C		
(Appellant)	..	(Respondent)

Assessee by:	Shri Kirit S. Sanghvi
Department by:	Shri B.B. Rajendra Prasad (DR)

Date of Hearing: 03.01.2019
Date of Pronouncement: 30.01.2019

ORDER

PER AMARJIT SINGH, JM:

The present appeal has been filed by the revenue against the order dated 23.06.2017 passed by the Commissioner of Income Tax (Appeals)-22, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2007-08.

2. The revenue has raised the following grounds: -

"1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made, without giving a finding on the merits of the case on the basis of Hon'ble ITAT decision quashing the order u/s 263 passed by the CIT, as the same is further disputed.

2. The appellant craves leave to amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.

3. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the AO be restored.”

3. The brief facts of the case are that the assessment of the assessee was completed u/s 143(3) of the Act on 21.12.2009 assessing total income to the tune of Rs.1,39,41,028/-. Subsequently, on perusal of the assessment records, the CIT-10, Mumbai found that the appellant, though following percentage completion method, had not considered the receipts of Rs.25 lakhs whereas expenditure on account of construction of Rs.2,30,14,797/- was claimed in the profit & Loss A/c in respect of Vambay Shed Complex Project. It was also seen that the loss on One Time Settlement (OTS) amounting to Rs.16,38,155/- and interest expenses amounting to Rs.2,70,77,953/- on Dindoshi Project had been claimed in spite of the fact that no revenue had been recognized in the year under consideration. Thus, the appellant was not following percentage completion method as required by law. The CIT-10, Mumbai was, therefore, satisfied that the order u/s 143(3) dated 21.12.2009 was erroneous and prejudicial to the interest of revenue within the meaning of Section 263 of the Act and had accordingly passed order dated 26.03.2012 u/s 263 of the Act setting aside the said assessment order with the direction to the AO to frame the assessment de novo and to re-examine the revenue recognition and cost recognition in respect of all the projects. Consequent to the CIT's

order u/s 263 of the Act dated 26.03.2012, the AO completed the assessment vide order dated 28.03.2013 u/s 143(3) r.w.s. 263 of the Act wherein in the following additions were made:

Loss under OTS	Rs.16,38,155/-
Interest on Dindoshi Project	Rs.2,70,77,953/-
Loss on Vambay Shed Project	Rs.2,30,14,797/-

4. Thereafter, the assessee filed an appeal before the CIT(A) who set aside the assessment raised in view of the provisions u/s 263 of the Act, therefore, the revenue has filed the present appeal before us.

5. We have heard the argument and advanced by the Ld. Representative of the parties and perused the record. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.: -

“4. 3, I have considered the facts of the case and the appellant's submissions. Perusal of the Hon'ble Tribunal's order dated 17.05.2017 in ITA No.2659/Mum/2012 shows that the Tribunal has decided the matter in favour of the appellant by cancelling the order of the CIT-10, Mumbai dated 26.03.2012 passed under section 263 of the Act and restoring the original order of the Assessing Officer. The impugned order passed u/s 143(3) r.w.s. 263 of the Income Tax Act,1961 dated 28.03.2013, therefore, does not survive as it was passed consequent to the order dated 26.03.2012 u/s 263 of the Act passed by the Commissioner which has been quashed by the Hon'ble ITAT. As on date, there is nothing on record to indicate that the ITAT's order dated 17.05.2017 has been modified/overruled/reversed by a higher appellate authority. Respectfully following the order of the Hon'ble Tribunal, the impugned assessment order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 dated 28.03.2013 is, hereby, cancelled without adjudicating on the merits of the grounds of appeal.”

6. On appraisal of the above said finding, we noticed that the CIT(A) has set aside the assessment order dated 28.03.2013 passed u/s 143(3) r.w.s 263 of the Act on the basis of this fact that the Hon'ble ITAT has quashed the order of the CIT-10, Mumbai dated 26.03.2012 in which the provisions of Section 263 of the Act was invoked. There is nothing on the file to which it can be assumed that the order of the Hon'ble ITAT dated 17.05.2017 has been set aside or has been varied later on. Since the order passed u/s 263 of the Act dated 26.03.2012 is nowhere in existence, therefore, in the said circumstances, the assessment order dated 28.03.2013 u/s 143(3) r.w.s. 263 of the Act has no value in the eyes of law. Accordingly, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

7. In result, appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 30.01.2019.

Sd/-

(SHAMIM YAHYA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 30.01.2019

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

Vijay

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai