

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos.337 & 338/CHNY/2019
निर्धारण वर्ष /Assessment years : 2013-14 & 2014-15.

The Deputy Commissioner of Income Tax,
Non Corporate Circle 1(1)
Chennai 600 034. **Vs.** M/s. Jain Housing,
98/99, Habibullah Road,
T. Nagar,
Chennai 600 017.

(अपीलार्थी/Appellant)

[PAN AAEFJ 2408B]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Clement Ramesh
Kumar, Addl. CIT
प्रत्यर्थी की ओर से /Respondent by : Shri. M. Karunakaran, Adv.

सुनवाई की तारीख/Date of Hearing : 01-08-2019
घोषणा की तारीख /Date of Pronouncement : 08-08-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

These two appeals have been filed by the Revenue directed against the common order of the learned Commissioner of Income Tax (Appeals)-2, Chennai (hereinafter called as 'CIT(A)') dated 27.11.2018 for the assessment years 2013-2014 & 2014-2015.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose the same vide this common order.
3. For the sake of convenience and clarity the facts relevant to the appeal in ITA No.337/Chny/2019 for assessment year 2013-14 are stated herein.
4. The Revenue raised the following grounds of appeal:
 1. *'The order of the Ld. CIT(A) is contrary to law, facts and circumstances of the case.*
 2. *The Ld.CIT(A) erred in giving relief to the assessee by giving deleting the disallowance under section 36(1)(iii) without giving opportunity to the AO under Rule 46A of the Income tax Rules, to examine the fresh evidence introduced by the assessee at the appellate stage thereby denying opportunity under the Principles of natural justice to the AO.*
 3. *The Ld.CIT(A) erred in giving relief to the assessee by deleting the deemed income added by the AO under section 56(2)(viiia) of the Act without making a finding of fact nor applying any legal precedent or fiction for allowing the relief.*
 4. *The Ld.CIT(A) erred in giving relief to the assessee by deleting the deemed income added by the AO under section 56(2)(viiia) of the Act merely on equity without applying any provisions of the Income tax Act, 1961.*
 5. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the AO restored''.*
5. The brief facts of the case are as under:

The respondent-assessee namely M/s. Jain Housing is a Partnership firm constituted under the Partnership Act and engaged in the business of property development. The return of income for the assessment year 2013-2014 was filed on 30.09.2013 disclosing total income of Rs.65,98,36,420/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income, Central Circle-1(1), Chennai (hereinafter referred as "Assessing Officer") vide order dated 30.03.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act') at total income of Rs. 78,84,38,573/- after making addition of ₹2,59,00,000/- u/s.56 (2) (viiia) of the Act, disallowance of interest u/s. 36(1) (iii) of the Act of ₹46,57,535/- and disallowance of ₹9,80,44,618/- u/s.14A of the Act.

6. Being aggrieved by the above additions, the assessee preferred an appeal before the Id. CIT(A), who vide impugned order had granted partial relief by directing the Assessing Officer to delete the addition made u/s.56 (2)(viiia) of the Act as the difference in the valuation in the fair market value and the value adopted by the Assessing Officer is less than 1%. As regards to the disallowance u/s.36(1) (iii) of the Act, the Id. CIT(A) had directed the Assessing Officer to restrict the disallowance to the extent of ₹12,45,757/- and raised an addition of ₹9,80,44,618/- u/s.14A of the Act, was confirmed

by the Id. CIT(A). Thus, the appeal filed by the assessee came to be partly allowed by the Id. CIT(A).

7. Aggrieved by that part of the Id. CIT(A) order, which is against Revenue, the Revenue is in appeal before us. Ld. Sr. Departmental Representative submitted that the Id. CIT(A) after considering the additional evidence ought not have granted partial relief in respect of addition made u/s.36 (1) (iii) of the Act. As regards to the deletion of addition in respect of Section 56(2) (viiia) of the Act, the Id. Sr. Departmental Representative submitted that the Id. CIT(A) ought not have granted relief as the addition is based on the plain provisions of Income Tax Act.

8. On the other hand, the Id. Authorised Representative placed reliance on the order of the Id. CIT(A).

9. We heard the rival submissions and perused the material on record. The grounds of appeal No.1 & 5 are general in nature therefore, does not require any adjudication.

10. Ground No.2, challenges the direction of the Id. CIT(A) in deleting the addition to the extent of ₹30,34,323/-. The argument of the Id. Sr. Departmental Representative is that partial relief was granted by the Id. CIT(A) after considering the additional evidence filed in violation of provisions of Rule 46A of the Income Tax Rules,

1962. From the perusal of the assessment order, it is clear that the addition on account of interest was made on the ground that interest component was not included in the closing work in progress whereas from the order of the Id. CIT(A) relief was granted under the provisions of Section 36(1) (iii) of the Act. Thus, the Id. CIT(A) has granted relief on all together on different premises from that of the Assessing Officer. Therefore in such circumstances, the only recourse available to the Id. CIT(A) is to grant an opportunity of hearing to the Assessing Officer before deleting the addition. Therefore, we are of the considered opinion that the matter should be remanded back to the file of the Id. CIT(A) to decide the issue in proper prospective in accordance with law. Thus, the ground of appeal No.2 raised by the Revenue is partly allowed for statistical purpose.

11. Grounds 3 & 4 challenges the direction of the Id. CIT(A) in deleting the addition made u/s.56(2) (viiia) of the Act. The Id. CIT(A) granted relief after considering the fact that the difference of fair market value and the value adopted by the Assessing Officer is less than 1%. Nothing was brought to our notice controverting the findings of the Id. CIT(A). In these circumstances, we uphold the order of the Id. CIT(A) in this issue. Accordingly, grounds of appeal 3 & 4 raised by the Revenue stand dismissed.

12. In the result, the appeal of the Revenue in ITA No.337/CHNY/2019 for assessment year 2013-2014 is partly allowed for statistical purpose.

13. Now, we take up ITA No.338/CHNY/2019, for assessment year 2014-2015 for adjudication.

14. It is stated before us that the tax effect in this case is less than Rs.20 lakhs and therefore, the Circular No. 3/2018 dated 11.07.2018 issued by the Central Board of Direct Taxes (CBDT) in exercise of its power vested under Sec. 268A(1) of the IT Act comes into play wherein, the monetary limit for filing the appeal by the Revenue before the ITAT and various High Courts as well as Apex Court are revised with an object of the reducing the tax litigation. Vide para 3 of the said circular (supra) it is stated that in cases where the tax effect in the appeals to be filed before the Appellate Tribunal does not exceed Rs. 20 lakhs appeals should not be filed. Thus taking a note of CBDT Circular No. 03/2018, dated 11.07.2018 and considering the fact that the tax effect in the instant appeal is less than Rs.20 lakhs, the present appeal deserves to be dismissed as not pressed / not maintainable. However, we make it clear that the issues raised in the instant appeal is left open to be examined in the appropriate proceedings, if arises, in future. At the same time, we also make it clear that if the appeals fall in any of the exceptions referred to in the

above said CBDT Circular, the Revenue is at liberty to move an application for recalling the order if so advised. Accordingly, in the light of CBDT circular No.03/2018 dated 11/07/2018, the appeal stands dismissed.

15. In the result, the appeal of the Revenue in ITA No.338/CHNY/2019 for assessment year 2014-2015 is dismissed.

16. To summarize the results, the appeal of the Revenue in ITA No.337/CHNY/2019 for assessment year 2013-014 is partly allowed for statistical purpose whereas the appeal of the Revenue in ITA No.338/CHNY/2019 for assessment year 2014-2015 stands dismissed.

Order pronounced on 8th day of August, 2019, at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd,
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 8th August, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |