

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 704/JP/2019
निर्धारण वर्ष/Assessment Years : 2007-08.

The Income Tax Officer, Ward 5(2), Jaipur.	बनाम Vs.	M/s. Krishna Villa Apartments, through Partner Shri Arun Bansal, G-2, Park View Scheme, 8-Gandhi Path, Queens Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAIFK 3348 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख / Date of Hearing : 02.09.2019

घोषणा की तारीख / Date of Pronouncement : 03/09/2019

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the revenue is directed against the order dated 30th March, 2019 of Id. CIT (Appeals)-4, Jaipur arising from the assessment order passed in pursuant to the revision order under section 263 of the I.T. Act for the assessment year 2007-08. The revenue has raised the solitary ground as under :-

- “(i) Whether on the facts and in the circumstances of the case and in law, the Id. CIT (A) is justified in cancelling the assessment order passed by the AO u/s 263/143(3) dated 27.03.2014 relying upon the Hon’ble Rajasthan High Court order dated 09.10.2017 in the case of the assessee wherein the Hon’ble Court has neither considered nor adjudicated on the basis of validity of the order passed u/s 263 by the CIT and upheld by the ITAT and has decided issues on merit. Against the order of

the Hon'ble Rajasthan High Court's order dated 09.10.2017, department has filed SLP (C) No. 24743/2018."

- (ii) The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing.

2. The AO while passing the assessment order in pursuant to the revision order passed under section 263 of the IT Act, made certain additions and disallowances which were challenged by the assessee before the Id. CIT (A). The Id. CIT (Appeals) quashed the assessment order passed under section 143(3) read with section 263 of the IT Act in view of the decision of Hon'ble Jurisdictional High Court in the appeal challenging the revision order under section 263 of the Act.

3. We have heard the Id. CIT DR as well as the Id. A/R of the assessee and considered the relevant material on record. The present appeal emanates from the assessment order passed under section 143(3) in pursuant to the revision order under section 263 dated 30th March, 2013. At the outset, we note that the revision order passed under section 263 was challenged by the assessee and the matter was carried to the Hon'ble Jurisdictional High Court. The Hon'ble Jurisdictional High Court in judgment dated 9th October, 2017 has reproduced the substantial question of law in para 2 as under :-

" Whether the order passed by the Id. Respondent under section 263 of the Act of 1961 setting aside the Order passed by the Id. Assessing Officer u/s 153C/143(3)/144 for making de-novo assessment is not illegal and bad in law ?"

The said question was decided in favour of the assessee in para 6.2 and 7 as under

:-

" 6.2. He contended that assets were transferred in that case but in the present case assets were not transferred.

7. In view of the above, the appeal stands allowed and the issue is answered in favour of the assessee. However, it is made clear that as and when valuation of the land will be considered, the acquisition of price of Rs. 2 crores will not be considered, only the difference of Rs. 9 crores will be considered for any other purpose or for giving him benefit under the Income Tax Act."

In view of the fact that the revision order passed under section 263 stands quashed as bad in law by the Hon'ble Jurisdictional High Court, the consequential order passed by the AO under section 143(3) r.w. section 263 which is subject matter of appeal would not survive. Accordingly, we do not find any merit or substance in the present appeal of the revenue. However, if the revenue succeeds in the SLP filed against the order of the Hon'ble Jurisdictional High Court then the department may take appropriate steps.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 03/09/2019.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03/09/2019.

das/

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

1. अपीलार्थी / The Appellant-The ITO Ward 5(2), Jaipur.
2. प्रत्यर्थी / The Respondent-M/s. Krishna Villa Apartments, through
Partner Shri Arun Bansal, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 704/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar