

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA NO.452/MUM/2017(A.Y.2012-13)

Dy.Commissioner of Income Tax,CC.3(3),
Central Range -3, Room No.1923,
19th Floor, Air India Building,
Nariman Point, Mumbai 400 021

..... Appellant

Vs.

M/s. MGN Agro Properties Pvt. Ltd.,
(Prior to amalgamation known as
Krishiraj Trading Ltd.)
B-9,Trade Premises,Kamala Mills Compound,
Senapathi Bapat Marg, Lower Parel,MUMBAI 400013
PAN : AAACK2257N

..... Respondent

Appellant by : Shri Narendra Singh Jangpangi,
Respondent by : Shri Ajay Nagpal

Date of hearing : 03/02/2020
Date of pronouncement : 07/02/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [in short 'the CIT(A)] dated 25/11/2016 for assessment year 2012-13.

2. Shri Narendra Singh Jangpangi, representing the Department submitted that the CIT(A) has allowed the appeal of the assessee merely on the ground that the assessment order dated 17/03/2016 passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') is beyond time limit prescribed under section 153

of the Act. The Id.Departmental Representative submitted that the CIT(A) has failed to take into consideration the fact that the case of assessee was referred by the Competent Authority, i.e. Joint Secretary, Foreign Tax and Tax Research Division, Ministry of Finance, Government of India for seeking information from Commissioner of Taxation, Ministry of Finance, Tax Department, Republic of Cyprus under the 'Exchange of Information' Article of Indo-Cyprus DTAA. To support his content the Id.Departmental Representative referred to communications dated 25/03/2015 and 26/03/2016. The Id.Departmental Representative further pointed that whenever such information is sought, the provisions of Explanation-1 to clause(viii) to section 153(3) of the Act are attracted and the time period for completing the assessment is enlarged. The Id.Departmental Representative submitted that in the present case, the assessment under section 143(3) of the Act was completed within the extended time period as provided in Explanation -1, clause(viii). The Id.Departmental Representative prayed that the impugned order may be set aside and the appeal may be restored to the file of CIT(A) for adjudication on merits.

3. Shri Ajay Nagpal, appearing on behalf of the assessee stated that, reference was made for seeking information under 'Exchange of Information' article of Indo-Cyprus DTAA was neither in the knowledge of assessee nor the CIT(A). The Id. Authorized Representative of the assessee fairly submitted that the CIT(A) has allowed the appeal of assessee on the legal ground alone without visiting merits of the addition.

4. We have heard the submissions made by representatives of both sides and have perused the orders of authorities below. The Assessing Officer

passed assessment order under section 143(3) of the Act for assessment year 2012-13 on 17/03/2016. As per the provisions of section 153(1) of the Act, the time limit for passing scrutiny assessment order in the normal course would have expired on 31/03/2015. However, in the present case the time limit for passing assessment order got extended by virtue of operation of Explanation-I Clause (viii) to section 153 of the Act. As per section 153 Explanation-1, clause(viii), if reference is made by a Competent Authority under DTAA, the time limit for passing assessment order gets extended by a period of one year or till the date on which the information requested is last received by PCIT or CIT, whichever is less. For the ready reference the relevant provisions i.e. clause (viii) as it was applicable during the impugned assessment year is reproduced herein below:-

“Explanation 1.- In computing the period of limitation for the purpose of this section

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(i) xxxxxxxxxxxxxxxx

(ii)xxxxxxxxxxxxxxxx

(viii) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which information requested is last received by the Principle Commissioner or Commissioner or a period of one year, whichever is less,”

In the instant case, as per the documents available on record, the Competent Authority i.e. Joint Secretary (FT&TR-1), Ministry of Finance, Foreign Tax & Tax Research Division vide letter dated 25/03/2015, sought information in respect of assessee from Commissioner of Taxation, Ministry of Finance, Tax Department, Republic of Cyprus. The information was received from the Competent Authority of Cyprus on 21/07/2016. Thus, in the instant case time limit for passing the assessment order got extended by virtue of provisions

contained in Explanation-I clause(viii) to section 153 of the Act by one i.e. upto 31/03/2016. Undisputedly, the Assessing Officer passed the assessment order within the extended time.

4.1 We find merit in the contentions of the Id.Departmental Representative. Ostensibly, the CIT(A) was oblivion of the fact that information was sought by the Competent Authority under DTAA in respect of assessee. The impugned order is set-aside. The appeal is restored back to the file of CIT(A) for adjudication on merits. Consequently, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on Friday , the 07th day of January, 2020.

Sd/-
(RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 07/02/2020
Vm, Sr. PS(O/S)

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai