



ITA No.2588/Mum/2018
Krez Hotel & Reality Ltd.
Assessment Year-2008-09

आयकर अपीलीय अधिकरण "एक-सदस्य मामला" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

शमीम याहया, लेखा सदस्य
Shamim Yahya, Accountant Member

आयकरअपील सं./ I.T.A. No.2588/Mum/2018
(निर्धारण वर्ष / Assessment Year:2008-09)

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| Krez Hotel & Reality Ltd. (Formerly known as Jaykaydee Industries Ltd.) 9B-104, Samruddhi Building, Near Cinemax, S.V. Road Goregaon West Mumbai. | बनाम/ Vs. | Jt. Commissioner of Income Tax (OSD), Central Circle-39 Mumbai. |
| स्थायी लेखासं./जी आइ आरसं./PAN/GIR No. AAACJ 6927 E | | |
| (□ पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |
| अपीलार्थीकीओरसे/ Appellant by | : | Shri Mani Jani-Ld.AR Shri Parateek Jain-Ld. AR |
| प्रत्यर्थीकीओरसे/ Respondent by | : | Shri Chaitanya Anjaria-(Ld. DR) |
| सुनवाईकीतारीख/ Date of Hearing | : | 20/02/2020 |
| घोषणाकीतारीख / Date of Pronouncement | : | 16/06/2020 |

आदेश / ORDER

Shamim Yahya (Accountant Member):-

1. This appeal by the assessee is directed against order of learned CIT appeals dated 30/10/2014 and pertains to assessment year 2008-09.
2. The grounds of appeal read as under :-



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"The following grounds of appeal are without prejudice to one another.

- 1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax(Appeals) CIT(A) erred in confirming the action of the Ld. Assessing Officer(AO) in respect of notice issued dated 22/10/2010 u/s 153C despite the fact that Assessing officer of M/s. Bhatia International Ltd. Group of Indore has not recorded satisfaction.*
- 2. On the facts and circumstance in the appellant's case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in passing the order u/s 143(3) of the Act which is bad in law, illegal and/or otherwise void for the want of jurisdiction and therefore the order passed by the Ld. AO is liable to be quashed.*
- 3. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in making an addition of Rs. 2,06,821/- u/s 2(22)(e) of the Act on the ground or grounds as stated in the appellate order or otherwise.*
- 4. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing sum of Rs. 1,35,850/- u/s 14A of the Act on the ground or grounds as stated in the appellate order or other-wise.*
- 5. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in treating the loan received from Mr. Pawan Poddar amounting to Rs.26,000/- as alleged unexplained cash credit and thereby making the addition u/ 68 of the Act.*
- 6. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing contractual expenses amounting to Rs. 17,52,67s/-.*
- 7. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing sum of Rs. 1,06,978/- u/s 43B on account of nonpayment of PF/tax duty.*
- 8. The Appellant craves leave to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another."*

2. Although assessee has raised various grounds one of the grounds which is pressed relates to the absence of valid jurisdiction of the assessing officer for making the assessment.

3. In this regard assessee has also raised additional ground before the learned CIT appeals that the assessment was bad in as much as the proceedings were not initiated by issue of notice under section 153C of the income tax act for the impugned assessment year.



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4. The learned CIT appeals has noted that assessee submissions in this regard as under :

“6.2 As regards the additional ground as raised, it is the submission of the appellant that certain documents pertaining to the assessee's investments were discovered while carrying out search and seizure action under s. 132 on M/s. Bhatia International Ltd. group of cases, and a copy of the same were received by the A.O. in May, 2010. Therefore, in view of proviso to sub section of Sec: 153C, the A.O, ought to have initiated the proceedings under s. 15.3A r.w.s. 153 in respect of the following assessment years :

A.Y. 2005-06

A.Y. 2006-07

A.Y. 2007-08

A.Y. 2008-09

A.Y. 2009-10 .

A.Y. 2010-11 .

Hence, submitted that the A.O. ought to have issued notice under s. 153A r.w.s. 153C in respect of all the above assessment years, i.e. A.Y. 2005-05 co 2010-11. Since the A.O. has not issued any notice under s. 153A r.w.s. 153C in respect of A.Y. 2008-09, the assessment order passed by the A,O. under s. 143(3) w.r.t. the original return filed, under s. 139 is without jurisdiction, and the same is bad in law, therefore liable to be quashed. ”

5. Learned CIT appeals has rejected the assessee's claim referring to ITAT decision in the case of DCIT versus S K Jain Indore tribunal. The CIT appeals agreed with the assessing officer that assessee has misinterpreted the language of the proviso under section 153C of the income tax act. Accordingly learned CIT appeals has dismissed this addition ground raised. Against this the assessee has filed appeal before the ITAT learned counsel of the assessee stated that the issue is squarely covered by the decision of honourable Delhi High Court mentioned in the decision of ITAT Delhi bench in ITA No. 504/del/2015 vide order dated 27/6/2018.



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6. Upon hearing of the Counsel and perusing the records I find that it may be gainful to refer to the exposition of above case referred.

The same reads as under : -

“8. It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the “other person” would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.

9. Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same and allow the additional grounds of appeals. Resultantly, all additions stands deleted. Since the assessment order is set aside on legal grounds, therefore, there is no need to decide the addition on merit which has been left with academic discussion only.”



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7. Examining the present case on the touchstone of above said exposition I find that the assessing officer has not issued notice under section 153C. This as per the above exposition which has the support of Hon'ble Delhi High Court is fatal. Accordingly following the above precedent I set aside the order of authorities below holding that the assessment was devoid of valid jurisdiction.

8. Since I have held that the assessment was devoid of valid jurisdiction the adjudication of other issues raised in the grounds of appeal are now academic in nature and hence the same are not being dealt with.

9. In the result this appeal by the assessee stands partly allowed

Order pronounced on 16/06/2020 under Rule 34(4) of ITAT Rules.

Sd/-

(Shamim Yahya)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/06/2020

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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



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आदेशानुसार/ BY ORDER,

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