

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE K. JUDICIAL MEMBER**

ITA No. 2142 to 2144/Bang/2016
Assessment years : 2007 – 08 to 2009 – 10

M/s GMR Enterprises Private Limited, (Successor to GMR Projects Pvt. Ltd.) No. 25/1, Skip House, Museum Road, Bangalore - 560025 PAN : AAACN6998D	Vs.	DCIT Central Circle 2 (2), Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shree Sunil Jain, C. A.
Revenue by	:	Shree Muzaffar Hussain, CIT DR
Date of hearing	:	22.09.2020
Date of Pronouncement	:	25.09.2020

ORDER

PER ARUN KUMAR GARODIA, A. M.:

These three appeals are filed by the assessee and the same are directed against three separate orders of learned CIT (A) – 11, Bangalore all dated 26.09.2016.

2. In course of hearing, learned AR of the assessee submitted that Grounds No. 1 to 4 are in respect of technical issues and as per these grounds, this is the grievance of the assessee that the assessment orders passed by the AO u/s 143 (3) r.w.s. 153A are not valid for various reasons stated in these four grounds. He submitted that Ground No. 1, 2 and 4 are not pressed in any

of these three years and only Ground No. 3 is pressed in all these years out of first four grounds raised. Accordingly, we reject Ground No. 1, 2 and 4 as not pressed in each of these three years. Ground No. 3 reads as under:-

“The CIT (A) has erred in not considering that having regard to the second proviso to section 153A, the completed assessment cannot be disturbed except only in the case where is any undisclosed income found in the course of search or any incriminating documents pointing towards such undisclosed income is found in course of search or in the course of assessment proceedings under section 153A of the Income tax Act.”

3. In course of hearing, this was the first query of the bench as to whether this issue was raised before CIT (A) and if raised, what is his decision on this issue. In reply, it was submitted by the learned AR of the assessee that this issue was raised by the assessee before CIT (A) as per Ground No. 3 in all these years and it is decided by CIT (A) on pages 9 and 10 of his order by following various judgments but the main judgment followed by CIT (A) is of Hon'ble Karnataka High Court rendered in the case of Canara Housing Development Co. as reported in 274 CTR 122. At this juncture, this was the next query of the bench that in that case, this was the finding of Hon'ble Karnataka High Court that incriminating material was found and seized in that case and therefore, to examine the applicability of this judgment in the present

case, we have to see the factual finding of the learned CIT (A) as to whether incriminating material was found and seized in the present case or not. In reply, it was submitted by the learned AR of the assessee that there is no finding of CIT (A) on this factual aspect. Learned DR of the revenue also could not show any finding of CIT (A) on this factual aspect. Then this was the observation of the bench that to examine and decide the applicability of this judgment in the present case, we have to see the factual finding of the learned CIT (A) as to whether incriminating material was found and seized in the present case or not and in the absence of factual finding of CIT (A) on this aspect, we have to remand the matter to CIT (A) for a fresh decision after recording the finding on this factual aspect. In reply, both sides agreed to this proposition put forward by the bench.

4. In view of the above discussion, we set aside the order of CIT (A) on this issue and remand the matter back to his file for a fresh decision on this technical aspect after recording a finding on this factual aspect as to whether any incriminating material was found and seized in course of search in the present case or not. The CIT (A) is directed to decide this legal issue raised by the assessee as per Ground No. 3 after recording a finding on this factual aspect as to whether any incriminating material was found and seized in course of search in the present case or not. If the assessee succeeds on this

issue then no decision on merit is called for because in that situation, the assessment will not survive but if the assessee fails on this issue, then he should decide the issue on merit afresh because the decision on merit should be after deciding the technical issue. Hence, we hold that no adjudication is called for at present on merit in respect of various disallowances in these three years.

5. In the result, these appeals of the assessee are partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(GEORGE GEORGE K.)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: September, 2020.

/NS/*

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.