

THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 693/Mum/2020 (Assessment Year 2009-10)
I.T.A. No. 694/Mum/2020 (Assessment Year 2010-11)
I.T.A. No. 695/Mum/2020 (Assessment Year 2011-12)
I.T.A. No. 696/Mum/2020 (Assessment Year 2012-13)
I.T.A. No. 697/Mum/2020 (Assessment Year 2013-14)
I.T.A. No. 698/Mum/2020 (Assessment Year 2014-15)

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| DCIT, CC-1(2) 906, 9 th Floor Pratishtha Bhavan Old CGO Building Annexe, M.K. Road Mumbai-400 020. | Vs. | M/s. Hiranandani Realtors Pvt. Ltd. 514, Dalamal Chambers, 211, FPJ Marg, Nairman Point, Mumbai-400 021. PAN : AABCH5909F |
| (Appellant) | | (Respondent) |

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|-----------------------|-------------------------|
| Assessee by | Shri Vijay Mehta |
| Department by | Shri Hemant Kumar Leuva |
| Date of Hearing | 20.07.2021 |
| Date of Pronouncement | 26.07.2021 |

O R D E R

Per Bench :-

These are appeals by the Revenue against a common order of learned CIT(A) dated 18.11.2019 for all the above six assessment years.

2. The common ground raised read as under :-

“1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee without appreciating the fact that the Revenue is in appeal u/s 260A before Hon"ble Bombay High Court against the quashing of the order u/s 263 of the Act by the IT AT.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in relying on the order of the IT AT which had observed that no preliminary investigation was carried out before passing the order under section 263 of the Income Tax Act, 1961 without appreciating that as per Explanation 2, the order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue if the order is passed without making inquiries or verification which should have been made.

3. On the facts and circumstances of the case and in law, learned CIT(A) erred in relying on the order of the ITAT which failed to appreciate that in the order under section 263 a direction was given to the Assessing Officer to complete the assessment order afresh after conducting necessary enquiries on the issues mentioned therein and after affording proper opportunity to the assessee and after obtaining fresh approval u/s 153D of the Act.
4. The appellant craves leave to add, to amend and/or to alter any of the ground of appeal, if need be.”
3. At the outset it is brought to our note that the assessment order in these cases have been framed pursuant to 263 orders passed by learned CIT. The CIT(A) in these cases has noted that the ITAT has set aside these 263 order passed by learned CIT. Hence learned CIT(A) has concluded that since the orders passed under section 263 do not survive, these assessment orders passed pursuant thereto also do not survive.
4. In this view of the matter learned Counsel of the assessee submitted that learned CIT has taken correct view of the matter.
5. Per contra learned Departmental Representative fairly agreed that at the level of ITAT these appeals no more survive as ITAT has set aside section 263 order of learned CIT pursuant to which these assessments have been framed.
6. Upon careful consideration we note that the ITAT vide order dated 10.1.2019 in ITA Nos. 2377 to 2379/Mum/2018 for A.Y. 2012-13 to 2014-15 has already allowed the assessee’s appeals against section 263 order passed by learned CIT in these cases on merits. Further vide order dated 26.12.2018 in ITA No. 2373 to 2376 for A.Y. 2008-09 to A.Y. 2011-12 the ITAT has quashed the Revision order passed by learned CIT for those years. Since Hon'ble High Court has not reversed these order of ITAT, we do not find any infirmity in the order of learned CIT. hence, we uphold the same.

7. In the result, these appeals of the Revenue are dismissed.

Pronounced in the open court on 26.7.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 26/07/2021

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,

(Assistant Registrar)
ITAT, Mumbai

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