

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 3074/Mum/2019

(निर्धारण वर्ष / Assessment Year 2009-10)

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| Chouhan Builders India Housing Development Pvt. Ltd. 104A, Sajid Tower, Amboli, Andheri (W), Mumbai-400 058 | बनाम/ Vs. | The Income Tax Officer, Ward 9(2)(4), Mumbai-400 020 |
| (अपीलार्थी / Appellant) | | (प्रत्यर्थी/ Respondent) |
| स्थायी लेखा सं./PAN No. AACCC1839Q | | |

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| अपीलार्थी की ओर से/ Appellant by | : | Dr. K. Shivaram, Ms.Neelam Jadhav, ARs |
| प्रत्यर्थी की ओर से/ Respondent by | : | Ms. Shreekala Pardeshi, DR |

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| सुनवाई की तारीख / Date of hearing: | 21.06.2021 |
| घोषणा की तारीख / Date of pronouncement: | 21.06.2021 |

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)]-16, Mumbai [in short CIT(A)], dated 28.03.2019. The assessment was framed by the Income Tax Office, Ward-9(2)(4) Mumbai (in short DCIT/ITO/ AO) for



the A.Y. 2009-10 vide order dated 19.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee drew our attention to revise grounds of appeal and in the revised grounds of appeal, the assessee has raised the first issue of reopening which read as under:-

"I. Reopening is bad in law

1. On the facts and circumstances of the case, the reopening is done beyond period of four years and has been done on the basis of alleged statements / documents found in the course of search of third party tinder section 132 of the Act. Hence, the provisions of section 147 read with section 148 of the Act are not applicable. Hence reopening of assessment for search related matter is bad in law and liable to be quashed as the correct provision should have been section 153C and not provision of section 147 or 148 of the Act.

2. Without prejudice to above, alleged sanction obtained by the AO is not in accordance with the law as neither in the notice reference was mentioned nor was mentioned in the recorded reasons and also the alleged sanction was mechanical and without application of mind by the sanctioning authority, as the issue of notice and date of sanction as referred in the disposal of objection

was same day without application of mind and there was no failure to disclose any material facts by the assessee, hence the reopening of the assessment is bad in law hence may be quashed."

3. In regard to merits, the learned counsel for the assessee drew our attention to ground Nos. 2 and 3 which read as under:

"II. Principle of Natural justice is violated:

3. Without prejudice to above, the addition of Rs.20,00,000/- confirmed by the CIT (A) merely on the basis of statement recorded u/s.131 of Shri Akshay Doshi, without giving an opportunity to the appellant for cross examination in the course of assessment proceedings as well as appellate proceedings, and also without furnishing the complete statement of the third party, as the principle of natural justice is violated. Hence the addition confirmed by the CIT (A) may be deleted.

III. Merits: Addition of Rs.20,00,000/ is neither based on facts or law hence liable to be deleted

Without prejudice to above, merely on the basis of alleged statement of the third party without giving an opportunity of cross examination, when in the alleged statement neither refers the name of the appellant nor

the amount, hence the addition confirmed by the CIT (A) may be directed to be deleted.”

4. The learned Counsel for the assessee took us through the order of CIT(A) and the adjudication done in Para 4.2 and 4.3. He referred to Para 4.2 and stated that the CIT(A) has not at all adjudicated the issue of reopening and there is no speaking order. On this issue he has not adjudicated whether, this being a search case, the assessment should have been done under section 153C of the Act or under the provisions of section 147 read with section 143(3) of the Act.
5. Even on merits the learned Counsel for the assessee stated that the CIT(A) in Para 4.3 not at all passed speaking order and he simply confirmed the Assessing Officer's findings and that also in a very cursory manner.
6. When these facts were confronted to the learned Sr. DR, Smt. Shreekala Pardeshi, she could not support the order of the CIT(A) or defend the order of the CIT(A).
7. After hearing both the sides and as conceded by both the sides, the matter needs re-adjudication at the level of the CIT(A) afresh. Needless to say that the CIT(A) will adjudicate all the jurisdiction issue first and thereafter on merits. Further, needless to say the CIT(A) will pass a speaking order on the issues after providing reasonable opportunity of being heard to the assessee. Hence, we



remanded the matter back to the file of the Commissioner of Income Tax (Appeals).

8. In the Result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 21.06.2021.

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21.06.2021

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

व. निजी सचिव/ Sr. Private Secretary

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai