

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.18/Kol/2020
Assessment Year: 2009-10

ACIT, Circle-2(1), Kolkata..... Appellant
vs.

M/s Infinity Infotech Parks Ltd..... Respondent
Plot-A3, BlockGP, Sector-V,
Salt Lake, Kolkata-700091.
[PAN: AABCI0692J]

C.O No.14/Kol/2020
Assessment Year: 2009-10

M/s Infinity Infotech Parks LtdCross-Objector
vs.

ACIT, Circle-2(1), Kolkata..... Respondent
Plot-A3, BlockGP, Sector-V,
Salt Lake, Kolkata-700091.
[PAN: AABCI0692J]

Appearances by:

Shri Akkal Dudhwewala, FCA appeared on behalf of the appellant.

Shri Tushal Dhawal Singh, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 15, 2022

Date of pronouncing the order : June 16, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The captioned is the appeal filed by the Revenue and the corresponding Cross-Objection by the assessee against the order dated 30.10.2019 of the Commissioner of Income Tax (Appeals)-10, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. First we take up Revenue's appeal in ITA No.18/Kol/2020. The Revenue in this appeal has taken the following grounds of appeal:

"1. That on the fact and circumstances of the case and on law, Ld. CIT(A) has erred in granting relief to the assessee on account of "Depreciation on building held as closing

stock” for Rs.8,43,55,803/- claim of which was disallowed by the A.O u/s 32 during reassessment.

2. The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

3. At the outset, the Id. Counsel for the assessee has invited our attention to the impugned order of the CIT(A) to submit that the issue relating to the claim of depreciation on block of building has been decided by the Id. CIT(A) in favour of the assessee following decision of the Tribunal in the own case of the assessee for the preceding assessment year 2007-08 and 2010-11 in ITA No.413&414/Kol/2015 vide order dated 09.06.2015. The Id. Counsel has further submitted that the Department had preferred appeal against the aforesaid order of the Tribunal before the Hon’ble Calcutta High Court. That the Calcutta High Court vide order dated 18.07.2018 reported in [2018] 96 taxmann.com 274 (Calcutta) has affirmed the order of the Tribunal, the relevant part of the observations of the Hon’ble Calcutta High Court on the issue are reproduced as under:

“22. As to the second ground, that of depreciation, the key to the issue is found in the information furnished at paragraph 43 of the order impugned herein.

23. The 39% of the constructed area that was retained by the assessee was in an information technology park and long-term leases were granted in respect of some portions thereof by the assessee and other portions were let out on short-term leases. In respect of assessment years 2004-05 and 2005-06, the matter as to how the depreciation was to be arrived at fell for consideration of the CT (Appeals) and of the Tribunal. The moot point was whether the land had to be regarded as a current asset which could be dealt with by the assessee in its usual course of business or it had to be treated as a fixed asset of the assessee, probably deriving income. The CIT (Appeals) passed an order on such aspect of the matter on August 20, 2010 and on September 8, 2011 the Tribunal passed its order, holding that the immovable property had to be regarded as a fixed asset of the assessee and depreciation calculated accordingly. Since such issue in respect of the same immovable property had been conclusively dealt with in orders passed by authorities superior to the Commissioner, the Commissioner, in exercise of his powers under Section 263 of the Act, could not have reopened the same issue. It was a closed chapter and the Assessing Officer's acceptance of the quantum of depreciation based upon the assessee's representation that such asset had to be treated as the assessee's fixed asset could not have been questioned.

24. Since there is no merit in either issue covered by the Tribunal's order and questioned by the Revenue herein, ITAT No.225 of 2015 and GA No.4050 of 2015 are dismissed.”

4. Respectfully following the above proposition of law laid down by the Hon'ble Calcutta High Court, we do not find any merit in the above appeal of the Revenue and the same is hereby dismissed.

The Id. Counsel for the assessee has submitted that since the impugned issue has already been decided in favour of the assessee, therefore, he does not press the cross-objection. Cross-objection of the assessee is hereby dismissed as not pressed.

5. In the result, the appeal of the Revenue and C.O of the assessee stand dismissed.

Kolkata, the 16th June, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 16.06.2022.

RS

Copy of the order forwarded to:

1. ACIT, Circle-2(1), Kolkata
2. M/s Infinity Infotech Parks Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches