

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.4734/Del/2019  
(ASSESSMENT YEAR 2014-15)**

Asst. Commissioner of Income Tax Circle-26(1) Delhi	Vs.	M/s VG Properties Pvt. Ltd. 38, DDA Commercial Complex, Zammrudpur Kailash Colony New Delhi-110 048  PAN-AAACV 2248J
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	Mr. Bhopal Singh, Senior Departmental Representative ("Sr. DR" for short)
Respondent by	Mr. Arun Kishore, CA

**ORDER**

**PER ANADEE NATH MISSHRA, AM:**

(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi, [Ld. CIT(A)", for short], dated 08/03/2019 for Assessment Year 2014-15.

Grounds taken in this appeal are as under:

*"1. On the facts and in the circumstances of the case Ld. CIT(A) erred in holding that the receipts of Rs.1,89,00,000/- received on revenue sharing basis as business receipts.*

2. *On the facts and circumstances of the case the Ld. CIT(A) erred in allowing the deduction u/s 80ID to the assessee despite the fact that the assessee has sub-letted the Hotel Property at Goa to M/s Highest Cruises and Entertainment Pvt. Ltd. who was actually running the Hotel Business and the assessee has received rent in the form of revenue sharing.*

3. *On the facts and circumstances of the case the Ld. CIT(A) erred in not appreciating that the deduction u/s 80ID is available to the assessee who is engaged in the business of hotel and assessee is clearly not engaged in the business of Hotel and even the main object clause of MoA is to “carry on the business as developers, promoters for commercial and industrial building .*

4. *On the facts and circumstances of the case the Ld. CIT(A) erred in relying on Chennai Properties and Investment Ltd. V. CIT [2015] 373 ITR 673 as facts are completely different and without appreciating the judgment given by the Hon’ble Apex Court in case of Raj Dadarkar & Associates v. Assistant Commissioner of Income Tax, CC-46 [2017] 394 ITR 592 (SC).*

5. *On the facts and circumstances of the case the Ld. CIT(A) erred in relying on the principle of consistency as the Hon’ble Delhi High Court in case of Krishak Bharati Cooperative Ltd. [2012] 23 taxmann.com 265 (Delhi) has held that there cannot be a wild application of the principle of consistency after interpreting the judgment given by the Hon’ble Apex Court in case of Radhasoami Satsang.*

6. *On the facts and circumstances of the case the Ld. CIT(A) erred in allowing expenses claimed by the assessee.*

7. *The appellant craves, leave or reserving right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

(B) In the course of appellate proceedings in Income Tax Appellate Tribunal (“ITAT” for short) a computation of tax effect was filed from the assessee’s side, wherein it was submitted that the tax

effect was less than Rs.50,00,000/-. The working of the tax effect submitted from the assessee's side, as aforesaid, is reproduced as under:

"1. Income assessed vide order dated 28.11.2016 :	Rs.1,89,00,000/-
2. Income declared after claiming relief of Rs. 30,21,185/- u/s 80ID (Copy of acknowledgment enclosed)	: <u>Rs.36,35,166/-</u>
3. Balance Net Addition under challenge	: <u>Rs.1,53,64,834/-</u>
<b>Income Tax on Rs.1,53,64,834/- :</b>	
-Basic Tax @ 30%	: Rs.46,09,450/-
-Add Sur Charge @ 2%	: <u>Rs. 92,289/-</u>
Total	: Rs. 47,01,636/-
-Add Education Cess @3%	: <u>Rs.1,41,049/-</u>
Grand Total	: <u>Rs.48,42,688/-</u>

*Since the tax effect in the present appeal is less than Rs.50,00,000/-, in terms of CBDT guidelines, the above appeal may kindly be disposed off as below the appealable limit."*

(C) At the time of hearing before us, representatives of both sides, learned Authorized Representative ("Ld. AR" for short) for the assessee, as well as the learned Senior Departmental Representatives ("Ld. Sr. DR", for short), submitted that the tax effect in this appeal being below Rs.50,00,000; this appeal was not maintainable in view of the CBDT Circular No.17/2019 dated 08/08/2019 read with earlier CBDT Circular No. 3 of 2018, dated

11/07/2018, whereby minimum threshold limit of tax effect for filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/-. In a subsequent clarification issued by CBDT vide F. No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. In view of the foregoing, Ld. Sr. DR for Revenue did not press the appeal. Therefore, this appeal is dismissed being not pressed; and also being not maintainable having regard to aforesaid CBDT Circular No. 17/2019 dated 08/08/2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

**(D) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961; seeking recall of this order and, for restoration of this appeal if it is found that appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08/08/2019 and 11/07/2018.**

(E) In the result, this appeal by Revenue is dismissed.

This order was already pronounced orally on 2<sup>nd</sup> November, 2022 in the Open Court, in the presence of representatives of both sides, after conclusion of hearing. Now, this written order is signed today on 03/11/2022.

Sd/-

**(CHALLA NAGENDRA PRASAD)**  
**JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated:03/11/2022

*Pk*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI