

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एफ", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " F ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER  
आअसं.1635/मुं/2012 (नि.व. 2006-07)  
ITA NO.1635/MUM/2012(A.Y.2006-07)

M/s. Peninsula Land Limited,  
Peninsula Spenta, 2<sup>nd</sup> Floor,  
Mathuradas Mills, Senapati Bapat Marg,  
Lower Parel, Mumbai 400 013.

PAN: AACT-5173-A

..... अपीलार्थी /Appellant

बनाम Vs.

The Assistant Commissioner of Income Tax 7(1),  
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vijay Mehta

प्रतिवादी द्वारा/Respondent by : Ms. Vranda U Matkarni

सुनवाई की तिथि/ Date of hearing : 22/08/2022

घोषणा की तिथि/ Date of pronouncement : 15/11/2022

आदेश/ ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -20, Mumbai [ in short 'the CIT(A)'] dated 01/12/2011 for the Assessment Year 2006-07.

2. Shri Vijay Mehta appearing on behalf of the assessee submitted at the outset that the CIT(A) has erred in not admitting ground No.IV, V and VI raised

in the grounds of appeal (Form-35) before the First Appellate Authority. The Id. Authorized Representative for the assessee fairly admitted that the claim made in ground No.IV was raised for the first time before the CIT(A).

3. Per contra Ms. Vranda U. Matkarni representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submits that the appeal by assessee is against the order of appeal effect passed by the Assessing Officer. The assessee cannot raise fresh claim in an appeal arising out of order giving appeal effect.

4. Both sides heard, orders of authorities below examined. The short prayer of the assessee is that the grounds raised in the appeal were not adjudicated by the CIT(A). For the sake of clarity the grounds raised by the assessee before CIT(A), which purportedly were not admitted by the CIT(A) for adjudication are as under:-

**GROUND IV:**

1. *On the facts and in the circumstances of the case and in law, the AO erred in setting off unabsorbed business loss of A.Y. 2005-06 instead of setting off unabsorbed business losses pertaining to earlier years i.e. A.Y. 1997-98 to A.Y. 2004-05 before setting off that of A.Y. 2005-06 as claimed by the Appellant in the return of income.*

2. *The Appellant prays that the AO be directed to allow the claim for set-off of business losses of earlier years.*

**GROUND V:**

1. *On the facts and in the circumstances of the case and in law, the A.O. erred in restricting the Appellant's claim for TDS at Rs. 5,65,43,656/- as against Rs. 5,75,22,870/- claimed by the Appellant.*

2. *The Appellant prays that the AO be directed to allow the claim for TDS at Rs. . 5,75,22,870/-.*

**GROUND VI:**

1. *On the facts and In the circumstances of the case and in law, the A.O. erred in granting interest u/s 244A at Rs. 90,862/- as against Rs. 42,49,724/- due to the appellant,*

2. *The Appellant prays that the AO be directed to grant interest u/s 244A at Rs. 42,49,724/-.*

5. The present appeal is arising from the order giving effect to the order of CIT(A) dated 22/05/2009. We find that in so far as ground No. IV raised before CIT(A), there is no discussion in the impugned order. As regards ground No.V & VI the CIT(A) has observed that these issue were not before the CIT(A) ( in First Appellate proceedings arising out of assessment order) hence, the same do not figure in the order passed by CIT(A). The Assessing Officer has merely given effect to the order of CIT(A) dated 22/05/2009. If these issues were never raised in the First Appellate proceedings obviously the Assessing Officer would not have given effect to such issue.

6. In the facts of the case we deem it appropriate to restore ground No.I to the CIT(A) for adjudication.

7. The Id. Authorized Representative for the assessee has not brought on record any evidence to show that the issues raised in ground No.V & VI emanates from the original assessment order or the order of CIT(A) dated 22/05/2009. We find no merit in ground of appeal No.II to III, hence, dismissed.

8. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Tuesday the 15<sup>th</sup> day of November, 2022.

Sd/-

(SHRI S.RIFAUH RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/11/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/Sr. Private Secretary  
ITAT, Mumbai