

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 3008/Mum/2019 (A.Y. 2013-14)
ITA No. 3007/Mum/2019 (A.Y. 2014-15)

ITO-8(1)(1),

Room No. 662, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

PAN: AAECR5331G

..... Appellant

Vs.

M/s Raghuvveer Suburban Infrastructure Pvt. Ltd.
Gate No.2, Shree Ram Mills, Premises,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai-400013.

..... Respondent

Appellant/Revenue by : Smt. Mahita Nair, CIT-DR
Respondent/Assessee by : None
Date of hearing : 14/11/2022
Date of pronouncement : 27/12/2022

ORDER

PER GAGAN GOYAL, A.M:

These two appeals by Revenue are directed against the common order of Commissioner of Income Tax (Appeals)-14, Mumbai [for short 'CIT(A)'] dated 04.12.2018 for Assessment Years (AY) 2013-14 & 2014-15 respectively. We shall first take up appeal for A.Y. 2013-14 as lead case. The Revenue has raised the

similar grounds of appeal for both the AYs except variation of amounts in figure, which are as under:

"1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) is justified in deleting the addition of Rs 1,82,00,850/- being 5% of Rs 36,40,17,008/- of the cost of construction as the total income of the assessee.

2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) is justified in deleting the addition of Rs 21,897/- being 5% of Rs 4,37,932/-. The expense debited to P&L account related to the projects.

3. The Ld. CIT(A) should have seen that the assessee has to comply with AS-7 and percentage completion method norms. The Ld. CIT(A) should have seen that by this manner an assessee merely by entering into an agreement for payment on completion of say 80% or 90% or say 100% work can be bypass and flout AS-7 norms and postpone its tax liability and accrual of the income indefinitely.

The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing."

The Ld CIT(A)'s order is contrary in law and on facts and deserves to be set aside."

2. The notice of hearings of appeals was repeatedly sent to the assessee on the address mentioned in Form No.36. The notices sent through RPAD as well as on the direction of the Tribunal one Inspector visited the site of assessee but was failed to locate anywhere about of the company, consequently Inspector deputed by the Department served the notice through affixture on the Gate No. 2V on the premises in the presence of another Inspector Mr. Shashank Bhaskar. Copy of affixture is there on file. We observed that since first hearing in the case i.e. 27.01.2021, none is appearing on behalf of assessee. Up till 14 times, assessee has been called for the hearing but status of representation is same.

3. ITAT directed the Department to know the current status of assessee-company for effective hearing and adjudication of the matter. In this regard, we found on record a letter filed by Department dated 03.06.2022 stating that

assessee has filed its last ITR for A.Y. 2018-19 only and thereafter no return has been filed by assessee till date. On further verification by the Department from MCA website it is seen that the name of the company has been struck off from the register of the company, but there is no intimation either to the Department or to the ITAT.

4. We further observed that as per ROC records, company is no more active, hence adjudication against a non-existing entity is not permissible under the law. Although Department always has liberty to approach National Company Law Tribunal for revival of this company and then this matter can be further proceed before us. Right now the appeal of Department is being dismissed as the same is against a non-existing entity with a liberty to file Miscellaneous Application in future, if the assessee-company gets revived either by assessee itself or by the Department.

5. In view of above, instead of going into the merits of the case we dismiss the appeal *in limine*.

6. In the result, both the appeals of the Revenue are dismissed on this technical ground.

Order pronounced in the open court on 27th day of December, 2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai, दिनांक / Dated: 27/12/2022
SK, Sr.PS

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

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.

//True Copy//

BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai