

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 23/JP/2023
निर्धारणवर्ष/Assessment Year :2016-17

The DCIT Circle-1 Jaipur	बनाम Vs.	M/s. Wealthy Sky Development 30, Krishan Nagar, Janpath Shyam Nagar, Extn. Area Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACK 7048 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/Revenue by: Shri Ajey Malik, CIT-DR
निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal, CA

सुनवाई की तारीख/Date of Hearing : 22/02/2023
उदघोषणा की तारीख/Date of Pronouncement: 29 /03/2023

आदेश /ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the Revenue is directed against order of the ld. CIT(A) dated 24-11-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the Revenue has raised the following solitary ground of appeal.

“Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in deleting the additions of Rs.74,43,978/- made on account of disallowance of setting off of speculative loss.”

2.1 During the course of hearing, the Id. DR supported the order of the AO wherein the AO disallowed the set off of speculative loss of Rs.74,43,978/- from business income as per Section 73(1) of the Act.

2.2 On the other hand, the Id. AR of the assessee supported the order of the Id.CIT(A) and also the decision of ITAT Jaipur Bench in ITA No.15/JP//2021 in the case of the assessee.

2.3 We have heard both the parties and perused the materials available on record. It is noted that the Id. CIT(A) has taken the resort of ITAT Jaipur Bench in the case of the assessee in ITA No. 15/JP/2021 dated 27-06-2022 for the assessment year 2016-17 by observing as under:-

“8.2 As seen from the above order in ITA No. 15/JP/2021 dated 27-06-29022, the Hon’ble ITAT Jaipur Bench-B, Jaipur allowed the appeal filed by the appellant against the order of the Commissioner of Income Tax-1, Jaipur passed u/s 263 of the Income Tax Act, 1961 dated 25-03-2021, consequent upon which the Assessing Officer passed order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 dated 21-03-2002 by making disallowance of Rs.74,76,448/-.Thus consequent to following the appeal of the

appellant filed against the order u/s 263 of the Act dated 25-03-2021, the order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 on which the present appeal pending is nulled and has no legs to stand. Accordingly, the present appeal filed by the appellant against the order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 dated 21-03-2022 becomes infuctuous and is not required to be adjudicated separately as the order u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 passed by the Assessing Officer is nulled consequent to the order passed by the Hon'ble ITAT allowing the appeal filed by the appellant against the order u/s 263 of the Income Tax Act, 1961 dated 25-03-2021 passed by the Commissioner of Income Tax-1, Jaipur.

8.3 Therefore, all the grounds of appeal filed by the appellant are treated as allowed for statistical purposes.’’

The Bench noted that it has discussed the issue at length and given its verdict in the case of the assessee vide its order dated 27-06-2022 in ITA No. 15/JP/2021 for the assessment year 2016-17 which has been followed by the Id. CIT(A) in his order dated 24-11-2022. Hence, in view of the above deliberation, the Bench does not find any infirmity in the order of the Id. CIT(A) which is sustained. Thus the appeal of the Revenue is dismissed.

3.0 In the result, the appeal filed by the Department is dismissed.

Order pronounced in the open court on 29 /03/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/03/2023

*Mishra

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

1. The Appellant- DCIT, Circle-1, Jaipur
2. प्रत्यर्थी / The Respondent- M/s. Wealthy Sky Development , Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 23/JP/2023)

आदेशानुसार / By order,

Asstt. Registrar