

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 936/Bang/2023
Assessment Year : 2015-16

The Deputy Commissioner of Income Tax, Circle – 1(1)(1), Bangalore.	Vs.	M/s. ETA Star Infopark, No. 501, 502, North Block Front Wing, V Floor, Manipal Centre, Dickenson Road, Bangalore – 560 042. PAN: AACFE6010C
APPELLANT		RESPONDENT

Assessee by	:	Shri Annamalai, Advocate
Revenue by	:	Shri V. Parithivel, JCIT DR

Date of Hearing	:	04-01-2024
Date of Pronouncement	:	18-01-2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The instant appeal filed by the Department is directed against the order dated 13.09.2023 passed by the Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), arising out of the order dated 29.09.2021 passed under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the DCIT, Circle –1(1)(1), Bangalore for assessment year 2015-16.

2. In fact the assessee firm filed its return of income declaring total income at 47,90,41,310-/ on 02.09.2015 from the business income of Rs. 17,01,933/-, long-term capital gain of Rs. 47,42,88,744/- and income from other sources of Rs.30,50,632/-. Assessment order was passed by an order dated 18.12.2017 under 143 (3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") with an addition of Rs. 51,74,991/-to the business income of the assessee.
3. Thereafter the Ld.Principal Commissioner of Income Tax, Bengaluru-1 passed an order dated 18.03.2020 under section 263 of the Act setting aside the assessment order with a direction to the AO to tax the property obtained by the assessee from the joint development agreement dated 28.03.2011 as an adventure in the nature of trade. The order under section 143(3) read with section 263 of the Act on 29.09.2021 was passed treating the profit earned by the assessee from joint development agreement dated 28.03.2011 under the head "business income" instead of long-term capital gains.
4. Thereafter the Coordinate Bench by an under an order dated 02.09.2022 set aside the said revisional order passed by the Ld.PCIT holding the income received from the Joint Development Agreement is long-term capital gains and not business income, whereupon the assessment order was passed finally on 18.05.2023 from the office of the DCIT Circle-1(1)(1) Bangalore restoring the original assessment

order dated one 18.12.2017 passed under sections 143(3) of the Act.

5. Under these present facts and circumstances of the matter the learned counsel appearing for the assessee submits that as the order passed by the Coordinate Bench has already been given effect by the Learned Assessing Officer, the appeal has become infructuous and thus liable to be dismissed. Such submission made by the Ld AR has not been controverted by the learned DR. Hence taking into consideration the above facts of the matter, we dismiss this appeal preferred by revenue as infructuous.

In the result, the appeal preferred by revenue is dismissed.

Order pronounced in the open court on 18th January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(MADHUMITA ROY)
Judicial Member

Bangalore,
Dated, the 18th January, 2024.
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,
ITAT, Bangalore