

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4389/MUM/2023  
(Assessment Year: 2017-18)**

**Graceworks Realty & Leisure  
Private Limited,**

462 Senapati Bapat Marg,  
Phoenix Mills Premises,  
Lower Parel, Mumbai - 400013  
[PAN: AABCG2308P]

.....

**Appellant**

**Deputy Commissioner of Income-Tax  
Circle 7(1)(1), Mumbai,**

Room No. 126, Aayakar Bhavan,  
Mumbai - 400020

Vs

.....

**Respondent**

**Appearance**

For the Appellant/Assessee : Shri Rupak Chaudhari  
For the Respondent/Department : Dr. Kishor Dhule

**Date**

Conclusion of hearing : 08.05.2024  
Pronouncement of order : 10.05.2024

---

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 09/10/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 29/03/2023, passed under Section 144/144B read with Section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

- "1. *On the facts and in the circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) erred in misstating the facts of the case, stating that the assessee has not filed any submissions during entire appellate proceedings despite the fact that the assessee had filed submission vide dated 03.10.2023, hence the appellant prays that the order of the Hon'ble CIT(A) u/s. 250 may be held as bad in law.*
2. *Without prejudice to the above and on the facts and in the circumstances of the case and in law, the order passed under section 144 r.w.s 263 read with section 144B of the Act is erroneous and bad-in- law, as the case of the appellant was already set aside by the Hon'ble ITAT vide it's order dated 24.11.2022 to the file of the Hon'ble CIT(A). The appellant thus prays that the order passed under section 144 r.w.s 263 read with section 144B of the Act by the Ld.AO be treated as bad in law and consequently the order of the Hon'ble CIT(A) may also be treated as bad in law.*
3. *Without prejudice to Ground No. 1 and on the facts and in the circumstances of the case and in law, the learned A.O. erred in passing order dated 29.03.2023 under section 144 r.w.s 263 read with section 144B of the Act, without providing an adequate opportunity of being heard to the assessee."*

3. Heard both the sides. Record perused.

4. The relevant facts in brief are that regular assessment was framed on the Appellant under Section 143(3) of the Act vide order dated 29/12/2019 which was subjected to revision by the PCIT in exercise of powers under Section 263 of the Act vide order dated 22/02/2022. Subsequently, assessment order, dated 29/03/2023 under Section 144/144B read with 263 read of the Act was passed by the Assessing Officer, and the appeal preferred against the same was dismissed by the CIT(A) vide order dated 09/10/2023. Hence the present appeal.

5. It is admitted position that the order dated 22/02/2022 passed under Section 263 of the Act was passed has been set aside by the Tribunal vide order dated 24/11/2022 passed in ITA No. 719/Mum/2022. The very basis on which the Assessment Order, dated 29/03/2023 was passed has been set aside. Therefore, the Assessment Order dated 29/03/2023, passed under Section 144/144B read with Section 263 of the Act is also set aside. It is clarified that the Assessing Officer shall be at liberty to proceed as per law on order being passed as per the directions of the Tribunal vide order dated 24/11/2022 [ITA No. 719/Mum/2022].
6. In view of the above, Ground No. 2 raised by the Appellant is allowed while all other grounds raised by the Appellant are dismissed as being infructuous.
7. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 10.05.2024.

**Sd/-**  
**(Narendra Kumar Billaiya)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 10.05.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai