

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 126/MUM/2024
Assessment Year: 2015-16**

ACIT-14(1)(2),
Room No. 455, 4th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. Bombay Footwear Private
Limited,
Deonar Village, Behind Telecom
Factory, Deonar,
Mumbai-400088.
PAN NO. AAACB 2162 P
Respondent

Assessee by : None
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 21/05/2024
Date of pronouncement : 22/05/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 28.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

01. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in placing reliance upon the decision of the Hon'ble



ITAT in assessee own case for AY-2015-16 passed in ITA No. 1645/Mum/2021 wherein the order passed by PC/T u/s. 263 of the Act was quashed ignoring the fact that the assessee has entered into a joint development agreement by opting to revenue sharing formula to gain commercial advantage of trade & commerce and hence income has to be considered under the head Income from business & Profession in place of capital gain?

02. Whether on the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in placing reliance upon the decision of the Hon'ble ITAT in assessee own case for AY-2015-16 passed in ITA No. 1645/Mum/2021, wherein the order passed by PC/T u/s 263 of the Act was quashed ignoring the fact that the decision of ITAT is not accepted by Revenue and further appeal is filed before Hon'ble High Court Bombay which is pending?

03. The penalty proceedings initiated u/s 271(1)(c) of the Act deleted by CIT(A) may please be restored if ground (1) is upheld in favour of revenue.

04. The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

2. Despite notifying none attended on behalf of the assessee. At the outset, the Ld. Departmental Representative (DR) submitted that the Ld. CIT(A) has followed the order of the Tribunal dated 15.05.2023 wherein the Tribunal has quashed the order passed by the Ld Principal Commissioner of Income-tax (in short the Ld 'PCIT') u/s 263 of the Income-tax Act, 1961(in short the 'Act') . This impugned order of the Assessing Officer being consequential to the order u/s 263 of the Act, therefore, the Ld. CIT(A) has held that the said order could not survive. But the Revenue has preferred appeal before the Hon'ble High Court against the order of Tribunal quashing order u/s 263 of the Act, therefore, Revenue has challenged this order of the Ld. CIT(A) also.



3. We have heard submission of the Ld. DR and perused the relevant material on record. The original assessment order passed by the Assessing Officer was cancelled by the Ld. PCIT vide his order dated 23.03.2020 passed u/s 263 of the Act holding the original assessment order passed by the Assessing Officer as erroneous in so far as prejudicial to the interest of the Revenue and directed the Assessing Officer to pass a fresh assessment order. The impugned assessment order has been passed consequent to the order u/s 263 of the Act dated 23.03.2020. Since, the order passed u/s 263 dated 23.03.2020 has already been quashed by the Tribunal vide order dated 15.05.2023, the consequent impugned assessment order passed cannot survive. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute. The grounds raised by the Revenue are accordingly dismissed.

4. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 22/05/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 22/05/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai