

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नईमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.720/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)

JCIT(OSD) Corporate Circle-1(1) Chennai.	बनाम / Vs.	M/s. Casagrاند Premier Builder Limited (earlier known as M/s Casa Grand Builder P. Ltd.) 5 th floor, NPL Devi, New No.111, Old No.59. LB Road, Thiruvanmiyur, Chennai-600 041
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AACCC-2758-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Revenue by	:	Mrs. Swapna Nanu Ambath & Sh. V. Nanda Kumar Ld. CIT-DRs a/w Shri D. Hema Bhupal (JCIT) – Ld. Sr. DR
प्रत्यर्थी की ओर से/ Assessee by	:	Shri B. Ramakrishnan (CA) - Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	25-06-2024
घोषणा की तारीख / Date of Pronouncement	:	08-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by revenue for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 08.03.2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 22.03.2022. The Registry has noted delay of 11 days in the appeal, the condonation

of which has been sought by revenue. Considering the period of delay, the delay is condoned.

1.2 The grounds raised by the revenue read as under: -

1. The order of the CIT(A) is contrary to law, facts and circumstances of the case.
2. Whether the Ld.CIT(A) has erred in holding that the reassessment proceedings are bad in law by observing that the AO has initiated the reassessment proceedings after the expiry of time period permissible under section 147?
3. Whether the Ld.CIT(A) has erred in holding that the Ld.AO did not have jurisdiction on the A.Y 2016-17 as the allowability of carry forward of loss has not been adjudicated in the base year i.e., A.Y 2015-16 in which such allowability should have been tested?"
4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

1.3 The assessee has preferred petition u/r 27 of ITAT Rules, 1963 wherein the assessee has submitted that reopening is bad-in-law since the same amounts to change of opinion, there being no fresh tangible material coming to the possession of Ld. AO.

1.4 The Ld. CIT-DR advanced arguments supporting the assessment order whereas Ld. AR, while supporting impugned order on merits, assails assumption of reassessment jurisdiction. The case was put up for clarification which was responded to by both the sides. Having heard rival submissions and upon perusal of case record, the appeal is disposed-off as under.

Assessment Proceedings

2. The assessee was assessed for this year u/s 143(3) on 30.12.2018. However, the case was reopened by issuance of notice u/s 148 on 30.03.2021 for the following reasons: -

It is seen from the computation of income, taxable income was arrived after adjusting the brought forward business loss under Section 72 amounting to Rs.5,02,78,910/- for the Assessment Year 2015-16. However, on verification of the assessment year 2015-16, the original return was filed only on 01.12.2015. Since the original return was filed belatedly, the assessee company is not eligible to carry

forward the loss. Hence, the claim of brought forward loss of Rs.5,02,78,910/- for AY 2016-17 is to be withdrawn.

Though the assessee assailed proposed adjustment, Ld. AO denied adjustment of carry forward of loss of AY 2015-16 and finalized the assessment.

Appellate Proceedings

3. The Ld. CIT(A), under mistaken fact, observed that notice u/s 148 was issued beyond 4 years from the end of relevant assessment year and therefore, the action of Ld. AO was in contravention of provisions of Sec. 147. The Ld. CIT(A) further held that any loss which is allowed to be carried forward to next year could not be subject matter of adjudication in next year. In subsequent years, act of setting-off is merely a mathematical calculations and act of utilization of carry forward loss could not be adjudicated on standalone basis. The AO should have first reassessed the allowability of loss to be carried forward in AY 2015-16 and then its application in subsequent years. By disallowing the set-off of carry forward of losses in this year, Ld. AO has attempted to make a back door entry in AY 2015-16 which is untenable under law. Therefore, Ld. AO did not have any jurisdiction for this AY without first adjudicating the issue in the base year in which such allowability should have been tested. Accordingly, the proposed adjustment was deleted. Aggrieved as aforesaid, the revenue is in further appeal before us. The assessee, in its petition, has challenged the assumption of reassessment jurisdiction by Ld. AO.

Our finding and Adjudication

4. Upon perusal of impugned order, it could be seen that the adjudication of Ld. CIT(A) is on erroneous assumption of facts. We find

that for AY 2016-17, notice u/s 148 has been issued on 30.03.2021 which is clearly within 4 years and not beyond 4 years as wrongly noted by Ld. CIT(A) in para 4.1 of the impugned order. The Ld. CIT(A) considering the provisions of Sec.147 as applicable to proceedings beyond 4 years, held the action of Ld. AO to be in contravention of the provisions of Sec.147 and hence, the grievance of the revenue in ground no.2. Concurring with the same, we set aside the impugned order and restore the appeal back to the file of Ld. CIT(A) for de novo adjudication. The assessee has also raised legal grounds in its petition which may also be considered by Ld. CIT(A). The issue on merits is also kept open. Needless to add that opportunity of hearing shall be granted to the assessee. The assessee is directed to substantiate its case. All the issues are kept open.

5. The revenue's appeal stands allowed in terms of our above order.

Order pronounced on 8th August, 2024

Sd/-
(MAHAVIR SINGH)

उपाध्यक्ष / **VICE PRESIDENT**

चेन्नई Chennai; दिनांक Dated : 08-08-2024

DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / **ACCOUNTANT MEMBER**