

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH : HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

Miscellaneous Application No. 55/Chd/2023

In

आयकर अपील सं. / ITA NO. 548/Chd/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Haryana Urban Development Authority, Sector-6, Panchkula	बनाम	The ACIT Panchkula Circle, Panchkula
स्थायी लेखा सं. / PAN NO: AAAAH0087M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

Miscellaneous Application No. 124/Chd/2018

In

आयकर अपील सं. / ITA NO. 544/Chd/2017

निर्धारण वर्ष / Assessment Year : 2014-15

The ACIT Circle, Panchkula	बनाम	M/s Haryana Urban Development Authority, Sector-6, Panchkula
स्थायी लेखा सं. / PAN NO: AAAAH0087M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Ms. Rattan Kaur, C.A
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 31/05/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 26/08/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

These are two Misc. Applications filed by the Assessee and the Revenue against the order passed by the Coordinate Bench dt. 06/02/2018 in ITA No. 548/Chd/2017 for the A.Y. 2014-15 and in ITA No. 544/Chd/2017 for the A.Y. 2014-15 respectively.

2. In Revenue's Misc. Application, the limited contention raised by the Revenue relates to Ground No. 1 of its appeal which read as under:

" Whether on the fact and circumstances of the case, the Ld. CIT(A) has erred in applying a net rate of 20% in the case of residential property and 45% in the case of commercial property, despite the fact that a portion of the recoveries made by the assessee during the year is relatable to indirect charges received by the assessee ?"

3. It was submitted that the assessee also took the ground of appeal regarding the same issue in respect of addition on account of actual recoveries from allottees amounting to Rs. 3,35,49,00,000/- in ITA No. 548/Chd/2017 and the Coordinate Bench has dismissed the appeal of the assessee and the relevant findings are contained at para 31 & 32 of its order which read as under :

"31. We have perused the material before us and the arguments taken by both the parties regarding the commercial sector the main contention and ratio resorted by the Ld. CIT(A) to reduce the profits from 50% to 45% are that all the areas are commercial sectors are not equally developed so as to determined average higher profits. Similarly the compensation paid and the expenses incurred for development of commercial sectors and the extent of land utilized and salability thereof have been duly considered. Hence we decline to interfere with the order of the CIT(A) on this aspect.

Regarding the sale of residential sectors the remission given by the Ld. CIT(A) has already considered the submission of the assessee that license fee, conversion charges, scrutiny fee and service charges and reduced the profit by more than 7.68% which has been claimed by the assessee to be payable to the State Government by statute and reduced profit percentage from 30% to 20% hence, the 2.04% variation on account of unforeseen circumstances claimed at this junctive cannot be accepted to. The accounting standards resorted by the assessee or not truly reflecting the profits derived and one reason given by the CIT(A), is found to be cogent hence we decline to interfere with the order of the CIT(A) on this aspect. The profits computed pertains to the profits that one ought to have derived by the assessee on claiming all the eligible expenditure and accounting all other income. Hence, any expense disallowed or addition made would be treated as income in addition to the profits estimated.

32. As a result both the grounds of appeal are treated as dismissed."

4. It was submitted that the Revenue had also went in appeal on the same ground in terms of Ground No. 1 of its appeal and though the said issue has been discussed in the order for other assessment years however for the impugned A.Y. 2014-15, the said issue has not been discussed and therefore there is a mistake which is apparent from the record and in this regard, our reference was drawn to para 17 of the impugned order passed by the Coordinate Bench which read as under:

"17. Ground No. 2 for the Assessment Years 2004-05, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and ground No. 2 & 3 for the Assessment years 2012-13, 2013-14, 2014-15 of the assessee appeal and Ground No. 1 for the Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 of the Revenue appeal pertains to the issue of Indirect Charges of the residential commercial sector."

5. The Ld. AR is heard who has raised no objection and submitted that similar ground of appeal has been raised by the Revenue for other A.Y's and it seems that in para no. 17, there is a mistake which has crept in the order so passed by the

Coordinate Bench and the same may be appropriately rectified and the findings given in para 31 & 32 may be applied for A.Y. 2014-15 as well.

6. After hearing both the parties and considering the material available on the record, para 17 of the order so passed by the Coordinate Bench is hereby modified to include reference to Ground No. 1 taken by the Revenue in its appeal for A.Y. 2014-15 and the same as modified shall read as under:

"17. Ground No. 2 for the Assessment Years 2004-05, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and ground No. 2 & 3 for the Assessment years 2012-13, 2013-14, 2014-15 of the assessee appeal and Ground No. 1 for the Assessment Years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 of the Revenue appeal pertains to the issue of Indirect Charges of the residential commercial sector."

7. Further the findings given by the Coordinate Bench in para 31 & 32 will equally apply for A.Y 2014-15 and as such there is no change in the findings given by the Coordinate Bench. With these Misc. Application filed by the Revenue is disposed off.

8. In assessee's Misc. Application, it has been submitted as under:

" The appellant had preferred an appeal before the Honorable ITAT for the relevant assessment year against the order of CIT(A) raising various grounds of appeal. The Honorable ITAT has passed the combined order dated 06/02/2018 for A.Y. 2003-04 to A.Y. 2014-15 disposing off the appeals on various grounds issue wise. However, on perusal of the order it has been seen that in respect of the ground relating to annual maintenance charges (Ground No. 5a), the ground of appeal has been remanded to the AO with the direction to the assessee to file the details to AO to determine the allowable expenditure failing which the assessee would be allowed the expenditure only on prorata basis. In this regard it is stated that the nature of expenditure and allowability of the same is not in dispute, the real dispute is regarding the year of allowability of expenditure and request was made that in case disallowance is upheld, the finding regarding the year of allowability be given. However, no finding has been given by the Honorable ITAT in respect of the year in which the annual maintenance expenditure will be allowed in case the expenditure is allowed to the assessee on pro rata basis.

Further the assessee raised a ground of appeal (Ground No. 5b), wherein it was requested that the maintenance income earned be allowed to be set off before computing the disallowance on account of the annual maintenance charges. The Honorable ITAT has not adjudicated this ground of appeal of the assessee and has not given any finding on the issue.

Also in respect of ground pertaining to town planning expenses (Ground 7) no finding has been given in respect of expenditure amounting to Rs. 78,42,338 which are general in nature. Though the entire issue amounting to Rs. 1,79,11,266/- has been remanded to the file of AO for the purpose of verification of type of expenses stating that the AO would allow as revenue expenditure on the amount spent on software purchases and due depreciation in case of hardware purchases. However, no direction has been given for the amount incurred on day to day expenditure of routine nature.

In view of the above the assessee files the miscellaneous application requesting the Honorable Bench no recall the order passed and adjudicate on the following issues in view of the principles of natural place otherwise it would cause undue hardship to the assessee.

1. That the finding be given with respect of the year in which the annual maintenance expenditure will be allowed in case the expenditure is allowed to the assessee on pro rata basis.
2. That the finding be given with regard to allowing the set off of maintenance income from annual maintenance charges before making he disallowance of 50%,
3. That the finding be given with regard to expenditure amounting to Rs. 78,42,338/- of routine nature claimed under the head Town Planning Expenses. "

9. Both the parties have been heard and material available on record including the decision passed by the Coordinate Bench has been carefully perused. Regarding annual maintenance charges, we find that the Coordinate Bench has referred to the decision in assessee's own case for A.Y 2003-04 and following the same has given detailed findings in para 58,59 and 60 of its order. Similarly, regarding town planning expenses, detailed findings have been given in para 128 of its order. In view of the same, we don't find any mistake apparent from record and the misc. application so filed by the assessee is hereby dismissed.

10. In the result, misc. application so filed are disposed off in light of aforesaid directions.

(Order pronounced in the open Court on 26/08/2024)

Sd/-
आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT
AG

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

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

1. अपीलार्थी/ The Appellant /
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar