

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.3745/MUM/2024  
(Assessment Year: 2007-08)**

**PNR Builders and Developers**

165/B, Kamala Terrace, Hindu Colony,  
B.A. Road, Dadar, Mumbai - 400014  
[PAN: AAIFP9506G]

..... **Appellant**

Vs

**Income Tax Officer Ward 20(2)(1),**

Piramal Chambers, Lal Baug,  
Mumbai- 400012.

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Paras Savla  
For the Respondent/Department : Shri Raj Singh Meel

**Date**

Conclusion of hearing : 29.08.2024  
Pronouncement of order : 03.09.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 24/05/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 26/02/2015, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**').
2. *The Appellant has raised following grounds of appeal:*
  - "1. *General*

*On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)[CIT(A)] has erred in dismissing the appeal as infructuous*

2. *Natural Justice Violated*

*On the facts and circumstances of the case and in law, the CIT(A)] failed to grant sufficient opportunity to present the case and thus principles of natural justice are grossly violated.*

3. *Reopening is bad in law*

3.1. *On the facts and circumstances of the case, and in law, the Ld.CIT(A) though accepting that the basis of reopening has gone, erred in dismissing the appeal as infructuous.*

3.2. *Without prejudice, the Ld. CIT(A) failed to appreciate that AO had issued notice under Section 148 without recording reasons prior to the issue of the notice under Section 148 and hence the reopening under Section 147 is bad in law and liable to be quashed.*

3.3 *Without prejudice, the CIT(A) failed to appreciate that the Assessee had filed complete details during the original assessment proceedings and the assessment order was passed under Section 143(3) after due application Reopening under Section 148 is nothing but a change of opinion, liable to be quashed.*

3.4. *Without prejudice, the Ld. CIT(A)/Ld. AO failed to appreciate that there was no failure on the part of the assessee to disclose all material facts and hence reopening u/s 147 is bad in law and liable to be quashed.*

3.5. *Without prejudice, the Ld. CIT(A) failed to appreciate that there was no valid sanction under Section 151 before issuance of notice under section 148, and hence the notice under section 148 is bad in law.*

4. *Notice u/s 143(2)*

*The Ld. CIT(A) failed to appreciate that jurisdictional notice under Section 143(2) was never issued and hence the order passed under Section 143 read with Section 147 is beyond jurisdiction and liable to be quashed.*

5. *On merits – Addition of INR 1 Crore u/s 69C*

*The Ld. AO erred in making the addition of Rs. 1,00,00,000/- under Section 69C as unexplained expenditure.*

6. *Interest u/s 234A, 234B and 234C*

*On merits, the Appellant denies its liability to the levy of penal interest under Section 234A, 234B and 234C, hence the interest levied may be directed to be deleted."*

3. By way of grounds raised in the present appeal the Appellant is, inter alia, seeking quashing of the order, dated 26/02/2015, passed by CIT(A) under Section 143(3) read with section 147 of the Act.
4. The facts relevant for adjudication of the present appeal are that in the present case the reassessment proceedings under Section 147 of the Act were initiated in the case of the Appellant for the Assessment Year 2007-08, pursuant to the directions by the Commission of Income Tax (Appeals) – 29, Mumbai, vide order dated 15/02/2013, while disposing off the appeal for the Assessment Year 2009-10 [*Appeal No. CIT(A) -29/RG-17/161/11-12*]. The aforesaid reassessment proceedings culminated into assessment order, dated 26/02/2015, passed by Assessing Officer under Section 143(3) read with Section 147 of the Act whereby addition of INR 1Crore was made in the hands of the Appellant as unexplained expenditure under Section 69C of the Act.
5. Being aggrieved, the Appellant preferred appeal before the CIT(A) challenging the validity of the reassessment proceedings as well as additions of INR 1Crore in the hands of the Appellant under Section 69C of the Act. The CIT(A) dismissed the appeal preferred as being infructuous vide order, dated 24/05/2024.
6. Being aggrieved, the Appellant has preferred the present appeal

before the Tribunal.

7. We have heard both the sides. The primary contention advanced on behalf of the Appellant is that order, dated 15/02/2013, passed by Commission of Income Tax (Appeals) for the Assessment Year 2009–2010 has been set aside by the Tribunal vide order dated, 09/03/2016, passed in ITA No. 2914/Mum/2013. Referring to the grounds raised in the aforesaid appeal before the Tribunal (as reproduced in paragraph 1 of the aforesaid order), all the issues were restored back to the file of the Assessing Officer. Once the order passed by the CIT(A), including the directions issued, has been set aside, the proceedings initiated pursuant to such directions cannot survive. He further submitted that for the Assessment Year 2009-10, the Assessing Officer has passed order under Section 143(3) read with Section 254 of the Act making addition of INR 1Crore, being the same amount, in the hands of the Appellant for the Assessment year 2009–2010. Therefore, addition made by the Assessing Officer vide assessment order, dated 26/02/2015, passed by Assessing Officer under Section 143(3) read with Section 147 of the Act cannot, in any case, be sustained since the same would amount to taxation of same income twice.
8. Per contra the Learned Departmental Representative placed reliance upon the orders passed by the Assessing Officer and supported the validity of the re-assessment proceedings and the addition of INR 1Crore made under Section 69C of the Act. It was submitted that the proceedings were initiated as per directions issued by the CIT(A) in terms of Section 150 of the Act and therefore, the validity of the reassessment proceedings cannot be challenged in the grounds raised in the present appeal.
9. We have considered the rival submissions and perused the

material on record.

10. We find that the CIT(A) had disposed off the appeal holding as under:

"5. *Decision:-*

*I have gone through the facts of the case, assessment order passed by AO, & submission filed by the appellant. The case of the appellant was opened on the basis of direction of Ld. CIT(A)-29, Mumbai in the case of the appellant for A.Y. 2009-10 Against the order of CIT(A), the appellant had preferred appeal before ITAT Hon'ble ITAT, Mumbai in their order dated 09.03.2016 has set aside the order of CIT(A) and remitted the file back to the AO to decide the matter afresh. The relevant para of the order of Hon'ble ITAT is reproduced here as under:*

*"5. With the assistance of both the parties, we have gone through the orders passed by the lower authorities as well as the documents sought to be placed as additional evidences under Rule 29. These documents show that there has been enormous litigation with respect to the transaction done by the assessee and the matter had reached before Hon'ble Supreme Court after the orders were passed by the Hon'ble Bombay High Court. Even the commencement certificate was given as late as 02.01.2015. All these documents were not considered by the lower authorities while passing their respective orders. But in our considered opinion, these documents are very crucial and may have direct bearing on the assessment of income of the assessee. Therefore, we send all the grounds back to the file of AO for considering all these issues afresh as per law and facts. The AO shall grant adequate opportunity of hearing to the assessee and the assessee shall submit all the documents as may be required by the AO or as may be considered appropriate by the assessee. The assessee is free to take all the legal and factual issues before the AO. The AO shall decide all the issues after considering all the facts and circumstances of the case and material on record. Thus, these grounds are allowed for statistical purposes."*

**Since, the basis of reopening i.e. the direction of Ld. CIT(A) in the appeal order for assessment year 2009-10 has been set aside by the Hon'ble ITAT, therefore, the present case becomes void abinitio and appeal become infructuous.** Further, it is also noticed from verification that after the directions of Hon'ble ITAT, AO has made assessment u/s 143(3) read with Section 254 for assessment year 2009-10 making addition of Rs. 1,00,00,000/- on account of unexplained expenditure. In view of the above, I am of the view that appeal has become infructuous.

6. In the result, the appeal is dismissed as infructuous.”

11. We note that the CIT(A) has specifically recorded that for the Assessment Year 2009-2010, pursuant to the directions given by the Tribunal vide order dated 09/03/2016 passed in ITA No. 2914/Mum/2013 [whereby the order of Commissioner of Income Tax (Appeals)-29 was set aside], Assessing Officer has passed order for the Assessment Year 2009-2010 under Section 143(3) read with Section 254 of the Act making addition of INR 1Crore in the hands of the Appellant under Section 69C of the Act. Therefore, the addition of 1Crore under Section 69C of the Act holding the same as unexplained expenditure for the Assessment Year 2007-08 cannot be sustained as the same would amount to double addition/disallowance. We further note that it is not even the case of the Revenue that the aforesaid order, dated 09/03/2016, passed by the Tribunal was challenged by the Revenue in appeal, and therefore, it can be concluded that the Revenue has accepted the aforesaid order of the Tribunal whereby the order passed by the Commissioner of Income Tax (Appeals)-29 for the Assessment Year 2009-10 was set aside. Given the aforesaid facts, we agree with the Learned Authorized Representative for the Appellant that re-assessment proceedings initiated pursuant to directions issued by the CIT(A), which have

since been set aside by the Tribunal, do not survive. Accordingly, the assessment order, dated 26/02/2015, passed by Assessing Officer under Section 143(3) read with Section 147 is quashed. In view of the aforesaid, Ground No. 3.1 raised by the Appellant is allowed while all the other grounds are disposed off as being infructuous.

12. In result, in terms of paragraph 11 above, appeal preferred by the Assessee is allowed.

Order pronounced on 03.09.2024.

**Sd/**  
**(Amarjit Singh)**  
**Accountant Member**

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

मुंबई Mumbai; दिनांक Dated : 03.09.2024  
*Patil, Sr.P.S.*

**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