

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.1030/Chny/2022
निर्धारण वर्ष/Assessment Year: 2008-09

The Deputy Commissioner of
Income Tax,
Central Circle 3(4),
Chennai 600 034.

Vs. M/s. Ruby Realty Private Limited,
Office B 908, Radiance Shine
Apartments, Kazhipattur OMR,
Chennai 603 103.
[PAN:AADCR2832B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Nandakumar, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri P. Murali Mohana Rao, C.A.
सुनवाई की तारीख/ Date of hearing : 29.08.2024
घोषणा की तारीख /Date of Pronouncement : 11.09.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order dated 22.09.2022 passed by the Id. Commissioner of Income Tax (Appeals) 18, Chennai for the assessment year 2008-09.

2. The Appellant-Revenue raised 4 grounds of appeal amongst which, the only issue emanates for our consideration is as to whether the Id. CIT(A) justified in restricting the addition to an extent of ₹.82.35 lakhs in respect of proportionate share of land in the facts and circumstances of the case.

3. Brief facts emanating from record are that the assessee is a company engaged in the business of real estate. A search under section 132 of the Income Tax Act, 1961 ["Act" in short] was conducted on 21.06.2011 at various business and residential premises of Platinum Holdings P. Ltd. including that of the assessee herein. Copies of sale deeds of numerous properties purchased by the assessee were seized during the course of search, identification of which is reflected in the assessment order. A notice under section 153C of the Act was issued and in response to which, the assessee requested the Assessing Officer to treat the return filed on 27.09.2008 as return of income in terms of notice under section 153C of the Act. Notices under section 143(2) and under section 142(1) of the Act were issued and the assessment was completed based on the facts presented and details furnished, inter alia, making addition of ₹.2,94,10,320/- on account of 'on money' and determined total income of the assessee at ₹.3,11,97,546/- as against the returned income of ₹.17,87,226/- vide order dated 28.03.2014 passed under section 153C r.w.s. 153A of the Act.

4. As aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A). We note that the assessee raised additional ground on 11.02.2019 before the Id. CIT(A) challenging

the action of the Assessing Officer in assuming jurisdiction under section 153C of the Act. The Id. CIT(A) answered the said additional ground against the assessee vide para 10.2 and on merits, restricted the addition made by the Assessing Officer on account of 'on money' to an extent of ₹.82,35,165/- [2,94,10,320 – 2,11,75,065] vide order dated 22.09.2022. Before the Tribunal, the assessee preferred an appeal against the order of the Id. CIT(A) on dismissing the additional ground in ITA No. 967/Chny/2022 and the Revenue preferred an appeal challenging the action of the Id. CIT(A) in giving relief to the assessee on merits in ITA No. 1030/Chny/2022 for adjudication.

5. The Id. DR Shri V. Nandakumar, CIT explained that the issue raised in the ground is not covered by circular issued by the CBDT fixing the monetary limit for filing appeals before ITAT, drew attention to Form 36 at Column 10 and submits that the tax effect is more than the limit fixed by the CBDT.

6. Be that as it may, the appeals of the assessee for the assessment years 2007-08 and 2008-09 in ITA Nos. 966/Chny/2022 & 967/Chny/2022 respectively were disposed off by the Coordinate Bench of this Tribunal vide order dated 17.05.2024, wherein, the Tribunal held that assumption of jurisdiction under section 153C of the Act is bad in law and quashed

the assessment order dated 28.03.2014 for AY 2008-09 vide para Nos. 4.1 to 6 of the said order.

7. The Id. AR Shri P. Murali Mohana Rao, CA vehemently argued that the present appeal of the Revenue has no legs to stand in view of quashing of assessment itself. He submits that when there is no assessment existing, the relief sought by the Revenue in this appeal on merits is not maintainable.

8. The Id. DR did not dispute passing a consolidated order dated 17.05.2024 by ITAT Chennai Bench in assessee's own case covering same issues as are in present assessment year.

9. After hearing both the parties and on perusal of the order dated 17.05.2024 passed by the ITAT Chennai Bench in assessee's own case for AY 2008-09, we find that the Revenue has no legs to stand on the ground as the Tribunal held *"the information obtained in an earlier search was third-party information which require recording of separate satisfaction note. The said information could not be utilized in proceedings under section 153 of the Act issued on the basis of search initiated in Platinum group of cases. No satisfaction note under section 153C of the Act is shown to have been recorded based on search conducted in the case of Om Sakthi Agencies*

(Madras) P. Ltd. [OSAPL]. Therefore, the assumption of jurisdiction was bad-in-law and accordingly, assessment is liable to be quashed. We order so.”

10. As discussed above, the search was conducted in the case of Platinum group, which is reflecting in first para of the assessment order including the assessee company. It is not disputed by both the parties, the case of the assessee arising out of the same search. Since the Coordinate Bench of ITAT held the assessment is bad in law and quashed the assessment order, the grounds raised by the Revenue in the present appeal, on merits become academic in view of non-existence of assessment order passed under section 153C r.w.s. 153A of the Act dated 28.03.2014. Thus, the ground raised by the Revenue being academic, is dismissed as infructuous. Thus the appeal of the Revenue is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 11th September, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 11.09.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.