

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

**SHRI PRASHANT MAHARISHI ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4161/MUM/2016
(Assessment Year: 2009-10)**

**Deputy Commissioner of Income Tax
Central Circle-4(2), Mumbai**
R. No. 1918, 19th Floor,
Air India Building,
Nariman Point,
Mumbai - 400021

..... **Appellant**

M/s. Ushdev International Ltd.
6th New Harileela House,
Mint Road, Fort,
Mumbai - 400 001.
[PAN: AAACU1672R]

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vijay Bhatt
For the Respondent/Department : Shri Ajay Singh

Date

Conclusion of hearing : 30.09.2024
Pronouncement of order : 08.10.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order dated 22/04/2014 passed by the Commissioner of Income Tax (A)-6, Mumbai, [hereinafter referred to as the '**CIT(A)**'], whereby the Ld. CIT(A) had decided the appeal of the Assessee against the Assessment Order, dated 28/03/2014, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**').
2. The Revenue has raised following grounds of appeal :

- "1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in deleting the addition of Rs.2,13,34,684/- made by the Assessing Officer by enhancing the gross profit of the assessee on the basis of non-genuine purchases booked by the assessee.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in deleting the addition of Rs.2,13,34,684/- made by the Assessing Officer without considering the decision of Hon'ble Apex Court in the case of CIT-Vs-Durga Prasad 82 ITR 540 even when the assessee failed to prove the genuineness of transaction of produce the purchase parties."*
3. When the present appeal was taken up for hearing, a copy of common order, dated 29/04/2022¹, passed by the Tribunal in the case of the Assessee was placed on record. On perusal of the same we note that vide order, dated 14/05/2018, petition [CP No. 1790/I&BC/NCLT/MB/MAH/2017] filed by State Bank of India against the Assessee under Section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted. Thereafter, vide order, dated 03/02/2022, passed in IA No. 1447/MB/C-II/2021 in CP(IB) No. 1790/MB/C-II/2017, resolution plan was approved by the National Company Law Tribunal, Mumbai Bench, Court II. As per the said order, all past liabilities arising out of any levies/tax dues to any government authority not forming part of the resolution plan and pertaining to pre-corporate insolvency resolution process period stand extinguished. In view of the aforesaid, the present appeal is

¹ Passed in cross-appeals for Assessment Years 2008-09 (ITA No. 3209 & 3794 /Mum/2018), 2009-2010, (ITA No. 1770 & 1790/Mum/2018) 2010-11 (ITA No. 1771&1791/Mum/2018), and 2012-13 (ITA No. 1772 & 1792/Mum/2018), and Assessee's Appeal for the Assessment Year 2011-2012 (ITA No. 2909 /Mum/2018), and 2014-2015 (ITA No. 2910/Mum/2018)

disposed of as being infructuous with liberty to the Revenue to approach the Tribunal in case of variation/change in the order dated 03/02/2022 and/or the approved resolution plan.

4. In result, the appeal is dismissed.

Order pronounced on 08.10.2024.

Sd/-
(Shri Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.10.2024
MP, LDC

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