

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-E : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.2525/Del/2024
Assessment Year : 2015-16

M/s Landmark Apartments (P)
Ltd., A-8, C.R. Park,
New Delhi – 110 019.
PAN : AABCL2120Q.
(Appellant)

Vs. Additional Commissioner of
Income Tax, Range-75,
New Delhi.

(Respondent)

Appellant by : Shri Vaibhav Goel, CA.
Respondent by : Shri Gireesh Kumar Kohli, Sr.DR.

Date of hearing : 13.11.2024

Date of pronouncement : 13.11.2024

ORDER

Per Mahavir Singh, Vice President :

This appeal by the assessee is arising out of the order of learned Commissioner of Income-tax (Appeals), NFAC in appeal No.41/10528/2019-20 dated 21st March, 2024 for the assessment year 2015-16.

2. The assessment was framed by the Assessing Officer for the relevant assessment year 2015-16 under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The penalty order under Section 271C, 272A(2)(k) and 272A(2)(g) of the Act was passed by Additional CIT, Range-75, New Delhi vide order dated 24th December, 2019.

3. At the outset, learned counsel for the assessee stated that there is a legal issue that the penalty order under Section 271C, 272A(2)(k) and 272A(2)(g) is barred by limitation. He also raised the issue that the CIT(A) has erred in dismissing the appeal in-limine for non-prosecution without going into the merits of the case and simplicitor for non-prosecution. For this, the assessee has raised the relevant grounds as under :-

- “1. That, on facts and circumstances of the case, the order dated 24.12.2019 made by Addl. Commissioner of Income tax, Range-75, is barred by limitation having been passed after the expiry of time limit laid down u/s 275(1)(c) of the Income Tax Act, 1961; That, the date of initiation of penalty is to be reckoned from the date of making reference by the ITO Ward 75(2) (i.e. from 24.05.2018) to the prescribed authority;
2. That, on facts and circumstances of the case, the order passed by Ld. CIT(A) is bad both in the eyes of law and on the facts of the case.
- 2.1 That, on facts and circumstances of the case, Ld. CIT(A) erred in dismissing the appeal in limine for non-prosecution without going either into the merits of the case or discussing the various grounds of appeal filed by the appellant.
3. That, on facts and circumstances of the case, the order made by Addl. Commissioner of Income Tax, Range-75, is non-est; That, the manual order dated 24.12.2019 made without complying with the mandate of CBDT Circular No.19/2019 dated 14.08.2019 (Para 3) is not valid in law;”
4. Learned counsel for the assessee drew our attention to the assessee’s paper book consisting of 43 pages and, he particularly drew our attention to page 4 wherein the relevant chronology of events is given, the relevant portion of which reads as under :-

Factors	In Mahesh Wood Case	Case of the Assessee
Assessment/Original Order made on	30.12.2011	17.04.2018
Whether penalty was initiated under the assessment/original order?	No	Recommended
Date of making reference to Addl CIT	23.07.2012	24.05.2018
Date of issuance of SHOW CAUSE NOTICE for levying penalty	28.08.2012	06.06.2019
Penalty Order	26.02.2013	24.12.2019
Whether penalty order held as barred by limitation?	Yes	Case before Your Honour

5. Learned counsel for the assessee also took us through the order of learned CIT(A) and noticing the order of learned CIT(A), we find that the

appeal is dismissed simplicitor for non-prosecution. The CIT(A) also noted that the Revenue has issued three notices for compliance on 08.02.2021, 13.03.2024 and 23.03.2024 but, there was no compliance. When these facts were confronted to the learned Senior DR, he could not controvert the same.

6. We have heard rival contentions and gone through the facts and circumstances of the case. After going through the facts and circumstances of the case, we notice that the order of learned CIT(A) is simplicitor for non-prosecution and there is no discussion on merits at all. As there is no adjudication by the learned CIT(A) on merits, we are left with no alternative but to remand the matter back to him. Learned CIT(A) is duty-bound to decide the issue on merits instead of passing order for non-prosecution simplicitor. Hence, we remand this appeal to the file of the learned CIT(A) with a direction that he will adjudicate first the issue of limitation and thereafter, he will also adjudicate the issue on merits, whether the assessee is exigible to penalties under Section 271C, 272A(2)(k) and 272A(2)(g) or not. In terms of the above, the matter is restored back to the file of the learned CIT(A).

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Above decision was pronounced in the open Court on 13th November, 2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar