

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं माननीय श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
HON'BLE SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.722 /Chny/2024  
निर्धारण वर्ष /Assessment Year: 2013-14

Assistant Commissioner of Income Tax, Corporate Circle-1(1), Nungambakkam, Chennai Vs. Adarsh Estates Private Limited, No.189/139, Golden Enclave, Luz Church, Mylapore, Chennai-4 [PAN: AADCA5788R]

आयकर अपील सं./ CO.No.52 /Chny/2024  
निर्धारण वर्ष /Assessment Year: 2013-14

Adarsh Estates Private Limited, No.189/139, Golden Enclave, Luz Church, Mylapore, Chennai [PAN: AADCA5788R] Vs. Assistant Commissioner of Income Tax, Corporate Circle-1(1), Nungambakkam, Chennai

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by : Ms.Sonali Khatod, C.A.  
प्रत्यर्थी की ओर से /Revenue by : Ms.Gouthami Manivasagam, JCIT  
सुनवाई की तारीख/Date of Hearing : 22.08.2024  
घोषणा की तारीख /Date of Pronouncement : 20.11.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal vide ITA No.722 is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1059764842(1) dated 16.01.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years

2013-14. The assessee on its part has challenged the aforesaid appeal of the revenue through CO.52 Supra.

2.0 At the outset we deem it necessary to reproduce the grounds of appeal raised by the revenue in its above appeal.

“...1. The order of Learned CIT(A) is contrary to the law , facts and circumstances of the case.

2. The Ld. CIT(A) has erred in deleting the addition without either ascertaining further facts from the Ld. AO or cause further enquiry to establish factual correctness of his decision ?.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of Learned CIT(A) may be set aside and that of the assessing officer restored....”

3.0 The Ld. DR submitted that the order of the Ld. CIT(A) is bad law and deserves to be set aside. Explaining the brief factual matrix of the case it was contended that the Ld. AO has passed order u/s 147 r.w.s. 144 on 29.03.2022 determining total income of the assessee at Rs.3,25,50,000/- u/s 69 of the Act in respect of an undisclosed immovable property. Placing reliance upon the assessment order, the Ld. DR informed that notices u/s 148 were issued to the assessee on 16.03.2021. The revenue had information in the AIR data base that the assessee had made an investment of Rs.3,25,50,000/- and which was not disclosed. Thereafter notice u/s 142(1) was issued on 12.11.2021 and

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21.01.2022. The assessee submitted its reply on 28.01.2022 and 15.02.2022 denying having made any transaction of Rs.3,25,50,000/-. The AO provided details of information available in its records on 09.03.2022 and for which the assessee had replied on 10.03.2022 itself. The Ld. AO proceeded to conclude that the assessee has purposefully and intentionally dragged the enquiries to the far end of the time barring period and also had not filed any return in response to 148. The AO issued a final show cause on 26.03.2022 to which assessee replied on 27.03.2022. The AO proceeded to reject the arguments and submissions made by the assessee and made impugned additions.

4.0 The Ld. Counsel for the assessee submitted through its CO No.52 that there were some disputes amongst partners as result of which delay have occurred in filing of returns for some years. The assessee also informed that there were some disputes before the NCLT also. As regards non-filing of return in response to notice u/s 148 the assessee informed that there were technical glitches in the departmental electronic eco-system during March-2021 to June-2021 which was widely known. It was submitted that the assessee had raised its grievance on 01.03.2022 vide acknowledgement No.45514010. The Ld. Counsel for the assessee argued that there was no merit in reopening its case and making addition

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on account of an AIR transaction where the details itself qualified the transaction as "Not matched". Thus the transaction per se was unverified and hence did not require any addition. It was vehemently contested that the assessee had nothing to do with the impugned transaction and the Ld. AO has not done any enquiry to prove any connection of assessee with the impugned transactions. In support of its contentions, the Ld. AR has filed paper book comprising above documents.

5.0 We have heard rival submissions in the light of material available on records. As regards revenue's appeal we have noted that the principal objection which can be deciphered from its grounds of appeal is that the Ld. First Appellate Authority has deleted the addition without either ascertaining additional facts from the assessing officer or causing further enquiries in support of his decision. We have noted that the grounds of appeal raised by the revenue extracted herein above in this order, themselves are beyond any intelligent comprehension. The appeal of the revenue appears to have been filed in haste without any application of mind. The ground of appeal should have been as to how the relief accorded by Ld. CIT(A), when tested on the cornerstone of facts, was erroneous or bad in law. The revenue on the other hand has

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tried to harp on the issue as to what CIT(A) ought to have done. The primary duty of the Ld. First Appellate Authority is to examine as to whether the decision taken by Ld. AO is supported by facts on records or not. His decision to conduct further enquiries is only necessary when the primary objective is not been achieved. Simply put the only controversy in the case was as to whether the decision of AO to hold assessee as alleged owner of an undisclosed asset was correct or not. The issue was relevant because the assessee had categorically submitted that it had not ever owned any such asset and also that the information in AIR itself classified the entry as “mismatched” thereby negating the very effect of the transaction. Therefore in the absence of any further enquiries on the matter to attach ownership of the alleged asset by the Ld. AO, the addition was unwarranted. The allegation of CIT(A) not asking for further facts from AO or causing any enquiries himself is unsubstantiated because the same was not required by the Ld. CIT(A). This without prejudice that as per extant procedures governing the subject, when the notice of an appeal being filed is sent to an assessing officer he always gets a right to appear before CIT(A), in hearings, defending his additions. The revenue has not brought on record any such action by the assessing officer. It appears that the appeal was filed by the revenue only keeping in mind the tax effects in the case.

6.0 We have also noted that the order passed by the Ld. AO is made again with callous haste and without any application of mind. The item no.5 on the first page of assessment order shows that the assessment was completed "...u/s 147 r.w.s. 144...". Contrary to this the concluding part of AO's order on page-3 reads as under "...The assessment is completed at total income of Rs.3,25,50,000/- u/s 143(3) r.w.s. 147 of the IT Act, 1961. Charge interest u/s. 234A, 234B, 234C of the IT Act, 1961....".. Thus the AO has given contradictory findings as to sections in which he has completed the assessment. He has taken a position in the order that the return of income was not filed. It therefore goes on to indicate that notice u/s 143(2) was not issued. Now when 143(2) was not issued, assessment cannot be concluded u/s 143(3). The illustrated contradiction is only to illustrate inherent contradictions in the order per se.

7.0 We have also noted that the Ld. AO has completed the assessment with premeditated conjectures. The Ld. AO has alleged the assessee to be guilty of making compliances at the fag end of the Financial Year. It is however seen from discussions in the assessment order that the assessee has been making compliances almost on the following day of the issue of query by the AO. It is not a case where the assessee has been seeking long adjournments or else not complying with the notices issued

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by the AO. We have also noted that the Ld. AO apart from merely relying upon AIR information has not done any enquiry whatsoever to attach ownership of impugned property on the assessee.

8.0 The relief accorded by the Ld. CIT(A) is found to be based upon proper appreciation of the facts of the case. He has rightly observed in para-4.5 of his order that the AO has not done any basic enquiry before arriving at his conclusion. The action of the assessing officer of making addition only on the basis of AIR information and without any independent enquiries constitutes a clear case of “borrowed satisfaction” which is not permissible in law. There exists a catena of judgements which postulate that an assessing officer is duty bound to hold his independent enquiries before drawing his conclusions more so if they are against the assessee.

9.0 Consequently we are of the view that the order of Ld. First Appellate Authority does not require any interference at this stage. Accordingly, we dismiss all the grounds of appeal raised by the revenue. As far as the CO No.52 raised by the assessee is concerned, we have noted that the same is challenging the averments raised by the revenue in its appeal vide ITA No.722 Supra. As the revenue’s appeal stands dismissed, the CO No.52 raised by the assessee stands allowed.

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9.0 In the result, the appeal of the revenue vide ITA No.722/Chny/2024 is dismissed.

10. In the result, the appeal of the assessee vide CO No.52/Chny/2024 is allowed.

Order pronounced on 20<sup>th</sup>, November-2024.

**Sd/-**  
(मनु कुमार गिरि)

**(Manu Kumar Giri)**

**न्यायिक सदस्य / Judicial Member**

**Sd/-**  
(अमिताभ शुक्ला)

**(amitabh shukla)**

**लेखा सदस्य / Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 20<sup>th</sup>, November-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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