

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.1918/Kol/2024

Assessment Year: 2015-16

DCIT, CC-2(2), Kolkata.....Appellant

vs.

Arya Realty Developers Pvt. Ltd..... Respondent

P-95, Lake View Road,

Kolkata – 700029.

[PAN: AAICA1390C]

Appearances by:

Shri Abhijit Adhikari, JCIT, Sr. DR, appeared on behalf of the assessee.

Shri S. M. Surana, Advocate & Sunil Surana, CA, appeared on behalf of the Revenue.

Date of concluding the hearing : November 27, 2024

Date of pronouncing the order : November 28, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the revenue against the order dated 05.06.2024 of the Commissioner of Income Tax (Appeals)-26, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the ld. DR raised issue of a delay of 35 days in filing the instant appeal. The revenue has submitted an application for condonation of delay citing valid reasons. After hearing the submissions, the delay is condoned and the appeal is admitted for hearing.

3. Brief facts of the case are that the assessee declared business income of Rs.3,81,39,040/-. The Assessing Officer treated this income as unexplained cash credit u/s 68 of the Act and accordingly re-classified it under the head 'income from other sources' by applying section 115BBE of the Act.

4. Aggrieved by the above order, the assessee went in appeal before the ld. CIT(A), where the ld. CIT(A) held that the income should be treated as business income and not income from other sources.

5. Aggrieved by this order, the revenue filed the present appeal before this Tribunal. At the time of hearing, the ld. DR contended that the Assessing Officer has correctly applied the section 115BBE of the Act which provides for a higher rate of tax on unexplained income. However, it was conceded that the enhanced tax rate u/s 115BBE is applicable only from the year 2017-18 onwards.

6. On the other hand, the ld. AR stated that the tax rate for business income and income u/s 115BBE was same for relevant assessment year 2015-16 i.e. 30%. He further stated that the ld. CIT(A)'s decision did not result in any loss of revenue as the effective tax rate remained unchanged. The ld. AR placed reliance on the judgment of the Hon'ble Kerala High Court in the case of Maruthi Babu Rao Jadav v. ACIT reported in (2021) 430 ITR 504, wherein, it was held that higher tax rate u/s 115BBE is applicable only from assessment year 2017-18 onwards. Moreover, the present appeal is covered by CBDT Circular No.9/2024 which restricted to filing of appeals by revenue before the ITAT assigning monetary threshold unless falling under specific exceptions.

7. We, after hearing rival submissions and perusing the materials available on record, find that while passing the impugned order, the ld. CIT(A) rightly treated the income as business income and tax rate applicable remained same in both cases. As such, there is no loss of revenue and the issue of applying section 115BBE of the Act does not arise for the relevant assessment year. We note that the applicability of enhanced rate u/s 115BBE of the Act is applicable only from assessment year 2017-18 onwards as clarified by various judicial

precedents including Maruthi Babu Rao Jadav v. ACIT (supra). Moreover, the present appeal does not fall under any of the exceptions stipulated under CBDT Circular No.9/2024. The tax effect in this case is below the monetary threshold prescribed and therefore, the appeal is not maintainable. In view of this, we find no merit in the appeal of the revenue and accordingly, the appeal is dismissed.

8. In the result, the appeal of the revenue is dismissed.

Kolkata, the 28th November, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 28.11.2024.

RS

Copy of the order forwarded to:

1. DCIT, CC-2(2), Kolkata
2. Arya Realty Developers Pvt. Ltd
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches