

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH
PANAJI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI G D PADMAHSHALI ACCOUNTANT MEMBER

I T A. Nos. 96/PAN/2023
(A.Y. 2018-19)

Milroc Good earth Developers, 501,Milroc Lar Menezes, Swami Vivekanand Road, Panaji, North Goa-403001, Goa.	Vs .	Pr.CIT, Aaykar Bhawan, EDC Complex, Patto Plaza, Panaji-403001, Goa. .
PAN/GIR No. AAYFM4095P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Ashok Kulkarni.AR
Revenue by	Shri.Captain Pradeep Arya CIT-DR

सुनवाई की तारीख/Date of Hearing	22.01.2025
घोषणा की तारीख/Date of Pronouncement	23.01.2025

ORDER

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the revision order u/sec 263 of the Act passed by the Pr.CIT Panaji Goa.

2. The brief facts of the case are that the assessee is a partnership firm and is engaged in the real estate business. The assessee has filed the return of income for the A.Y 2018-19 on 27.09.2018 disclosing a total income

of Rs.88,49,660/-. Subsequently the case was selected for complete scrutiny under CASS to verify the "Income From Real estate Business" and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the assessee has filed the information and details from time to time on E Portal. The assessing officer (A.O) considered the facts and material submitted supporting the information and made disallowance u/sec37(1) of the Act of Rs.35,000/- and assessed the total income of Rs.88,84,600/- and passed the order u/sec 143(3) r.w.s143(3A)&143(3B) of the Act dated 24.02.2021.

3. Subsequently the Pr.CIT on perusal of the records found that the A.O has passed the assessment order without examining and making enquiry with respect to the compensation paid to retiring partner/ debited to the profit & Loss account and was claimed as revenue expenditure. The Pr.CIT has issued notice u/s 263 of the Act and in compliance to the notice, the assessee has submitted the explanations on 10.01.2023. Whereas the Pr.CIT was not satisfied with the explanations and dealt on the provisions of the Act and relied on the judicial decisions and is of the opinion that the A.O has not undertaken the verification/examination of the facts and found the order passed by the A.O is erroneous and prejudicial to the interest of the revenue and set aside the assessment order passed on 24.02.2021. Aggrieved by the revision order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the Pr.CIT has erred in set aside the order u/sec 143(3) of the Act, which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. The Ld.AR submitted that the explanation 2 to sec 263 of the Act ought to be considered only when the AO has not applied his mind, the facts are to be verified and no enquiry is conducted. Whereas, on the merits of the case with respect compensation paid to retiring partner the Ld.AR submitted that is a allowable expenditure. The Ld.AR substantiated the submissions relying on the documentary evidence, provisions of the Act, and factual paper book and prayed for allowing the appeal. Per Contra, the Ld.DR supported the order of the Pr. CIT and made submissions that the assessing officer has not verified /examined the facts of payment of compensation to the retiring partner.

5. We heard the rival submissions and perused the material available on record. The Ld.AR envisaged that the order passed by the Pr.CIT is bad in law as the order revised under revision proceedings passed by the Pr. CIT is not erroneous and prejudicial to the interest of the revenue. The contentions of the Ld.AR are that the payment to the retiring partner is a revenue expenditure and is allowable. The Ld.DR submissions are that the Pr.CIT has dealt on the facts and information which proves that the Assessing Officer has not applied his mind and

not made enquiries on the disputed issue. We find there is no examination and verification of the facts or findings by the A.O on the payments made to retiring partner in the assessment proceedings. Accordingly, the matter needs to be verified and reasons for claim should be justified and the assessing officer shall adjudicate a fresh on merits on the disputed issue and shall provide adequate opportunity of hearing to the assessee and the assessee should also cooperate in submitting the information. Accordingly we do not find merits in the appeal filed by the assessee and is dismissed.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 23.01.2025.

Sd/-
(GD PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Panaji Dated: 23/01/2025

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT
6. Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar)ITAT,
Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			