

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, D, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.3110/Mum/2016
Assessment Year: 2011-12**

Shri Rajendra Ghag, 105, B-Win, Sea Flama, Dosti Flamingo, T.J. Road, Sewree(W) Mumbai-400015	बनाम/ Vs.	Pr. CIT -20, Piramal Chambers, Lalbaugh Mumbai
(Appellant)		(Revenue)
P.A. No. AEUPG9093B		

Appellant by	Shri Girish Dave & Smt. Makhija, (AR)
Revenue by	Shri Sunil K. Jha (CIT-DR)

सुनवाई की तारीख/ Date of Hearing :	06/10/2016
आदेश की तारीख / Date of Order:	06/10/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax, Mumbai-20, {(in short 'CIT'}, dated 28.03.2016 u/s 263 for the Assessment Year 2011-12 on the following grounds:

“1. The Learned Pr. CIT has erred in holding that the order passed by the Assessing Officer u/s. 143(3) was erroneous & prejudicial to the interest of revenue.

Without prejudice to the above,

2. The appellant submits that Learned Pr. CIT has erred in not appreciating that Assessing Officer while completing the assessment has taken one of the possible views which is duly supported by higher judicial Forums including jurisdictional High Court & therefore the order passed by the assessing Officer can neither be held as erroneous nor as prejudicial to the interest of revenue.

The appellant craves leave to add, amend, alter and /or vary any of the grounds 3. at the time or before the hearing of this appeal.

4. The appellant therefore prays that order passed by the Pr. CIT may please be set aside.”

2. During the course of hearing, arguments were made by Shri Girish Dave & Smt. Makhija, Authorised Representative (AR) on behalf of the Assessee and by Shri Sunil K. Jha, Departmental Representative (CIT-DR) on behalf of the Revenue.

3. During the course of hearing Ld. Senior Counsel vehemently argued the case on behalf of the assessee and brought to our notice that in this case AO had examined all the aspects during course of original assessment proceedings and thereafter the original assessment order u/s 143(3) dated 18.03.2014 was passed by the AO. Ld. CIT has indeed over looked the fact that all the details and evidences in regard to the issue raised by him have already been considered by the AO. Further, the order passed by the Ld. CIT may create confusion in the mind of the AO and it may lead to assessment of same income twice i.e. in the impugned year as well as in the subsequent year. Under these circumstances, it was

requested that impugned order of Ld. CIT passed u/s 263 should be quashed. It was alternatively prayed that to render justice to both the parties, the directions given by Ld CIT should be suitably modified so as to avoid double taxation.

3.1. Per contra, Ld. DR relied upon the orders of the lower authorities. It was fairly submitted by the Ld. DR that it is not the intention of the Revenue to make double taxation of the same income.

3.2. We have gone through the orders passed by the lower authorities and also heard submissions made by Ld. Senior Counsel of the assessee as well as Ld. CIT-DR appearing on behalf of the Revenue.

3.3. The brief background of this issue is that the assessee is an individual and engaged in the business of running an event management company in the name and style of M/s. Royal Services. During the course of original assessment proceedings carried out u/s 143(3), the AO noted that as per TDS details the assessee had contract receipts of Rs.1,73,38,399/- whereas the assessee had accounted the same to the extent of Rs.1,07,56,680/- only and therefore, he asked the assessee that why not difference of Rs.65,81,719/- should be brought to tax. In response, the assessee submitted to AO that full amount was not accounted for during the year as the total project was not completed and the amount of difference represented the amount of 'advance' receipts towards the total project which was completed in subsequent years. But, with a view to avoid litigation, the assessee offered the AO to bring to tax net profit @ of 15% of Rs.65,81,719/- i.e. Rs. 9,87,258/- to

tax as additional income for the impugned year. The AO accepted the offer of the assessee and made addition of Rs.9,87,258/- and completed the assessment accordingly.

3.4. Subsequently, Ld. CIT issued notice u/s 263 on the ground that whole amount of difference of Rs.65,81,519/- should have been added to the total income of the assessee for the reason that project was completed and all the expenses have been debited during the year under consideration and he directed the AO to bring to tax the entire amount of Rs.65,81,519/- on account of suppression of receipts, instead of restricting the same to 15% of receipts. The Ld. senior counsel objected to the direction of Ld. CIT mainly on the ground that project was not completed in the year under consideration and therefore total expenses relating to the project were not booked during the year under consideration and that remaining amount has already been included in its income by the assessee in subsequent years.

3.5. We have carefully considered submissions of the Ld. Senior Counsel as well as facts of this case brought before us. It is noted that crucial facts in this case are that whether the project was completed in the year under consideration or not and whether the entire expenses related to the project were debited in the year under consideration or not. It appears that AO ought to have made this inquiry so as to bring complete facts on record. Thus, to this extent we find that Ld. CIT is justified in making revision of the order. But, Ld. CIT has also not done complete justice to this case. He has also not taken any pain to verify whether the project was completed in this

year or not and without verifying this crucial fact he has asked the AO to bring to tax the entire amount during the year under consideration. If the contention of Ld. Senior Counsel that remaining amount has already been brought to tax in the next year is correct, then it shall lead to double taxation of the same income, which is not permitted under the income tax law. Therefore, while partly sustaining the order of Ld. CIT we modify his directions. The AO is directed to verify the correct facts in this regard while making assessment u/s 143(3) in pursuance to order u/s 263. In case, project is not completed in this year for which impugned advance of Rs. 65,81,719/- has been received during the year under consideration and if this amount has been included in the income by the assessee in the next year, then it shall not be included in the income of the impugned year. Primary burden is upon the shoulders of the assessee to show that impugned amount of advance has already been included in the income of subsequent years. The AO shall give adequate opportunity of hearing to the assessee and the assessee shall extend requisite cooperation to the AO by filing details and evidences as may be required by the AO as per law and facts of this case. Our view is supported by the judgment of Hon'ble Supreme Court in the case of CIT v. Excel Industries Ltd. 358 ITR 295. The relevant portion of the same is reproduced hereunder:

“32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book

and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”

3.6. Thus, keeping in view, the facts of the case and legal position as discussed above we sustain the order of Ld. CIT subject to the modifications given above. The AO is directed to follow our aforesaid directions while passing fresh assessment order and shall also keep in view the judgment of Hon'ble Supreme Court as mentioned above. Thus, with these directions appeal of the assessee is partly allowed.

4. In the result, the appeal of the Assessee is partly allowed.

Order was pronounced in the open court at the conclusion of the hearing.

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 06 /10/2016

Patel, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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