

(2024) 05 ITAT CK 0063

Income Tax Appellate Tribunal (Delhi B Bench)

Case No: Income Tax Appeal No. 825, 826, 827, 828, 829, 830, 995, 996, 997, 998, 999, 1000,
1378/DEL/2018

M/s. Emaar MGF Land Limited

APPELLANT

Vs

ACIT

RESPONDENT

Date of Decision: May 30, 2024

Acts Referred:

- Income Tax Appellate Tribunal Rules, 1963 - Rule 11
- Income Tax Act, 1961 - Section 14A, 143(2), 143(3), 153A, 153D

Hon'ble Judges: G.S. Pannu, (VP); Anubhav Sharma, J

Bench: Division Bench

Advocate: Salil Kapoor, Tarun Chanana, Ananya Kapoor, T. James Singson, Ankit Mishra

Final Decision: Allowed

Judgement

1. These are appeals preferred by the assessee as well as revenue against the common order dated 30.11.2017 of the Commissioner of Income Tax (Appeals) (hereinafter referred to as Ld. First Appellate Authority or 'the FAA' for short) in appeals filed before him against the orders of the Id. Assessing Officer (hereinafter referred to as the Ld. AO, for short), for AY 2010-11 onwards till AY 2015-16.

2. Heard and perused the record.

3. At the time of hearing it came up that on behalf of assessee an application of additional grounds of appeal under Rule 11 of the Income Tax Appellate Tribunal Rules, 1963 have been filed wherein following grounds are raised:-

"1. That on the facts and circumstances of the case and in law, the assessment completed and the additions made therein under section 153A r.w.s143(3) of the

Income Tax Act, 1961 ("the Act") are illegal, bad in law, void ab initio, without jurisdiction and barred by limitation.

2. That, on the facts and circumstances of the case and in law, the issuance of Section 143(2) notice is illegal and beyond the time prescribed in law. Hence, as issuance of Section 143(2) is barred by limitation, the entire assessment is illegal and liable to be quashed.

3. That, on the facts and circumstances of the case and in law, the AO has erred in not appreciating that this is a case of 'completed assessment and in the absence of any incriminating material qua each issue, the said additions are illegal and liable to be deleted.

4. That, on the facts and circumstances of the case and in law, the AO has erred in not appreciating that no incriminating material has been found for the year under consideration which belongs to the said year, and hence the said additions are illegal and liable to be deleted.

5. That, on the facts and circumstances of the case and in law, the approval under Section 153D of the Act is mechanical and without any application of mind and thus the impugned assessment order is illegal, bad in law liable to be quashed.

6. That on the facts and circumstances of the case and in law, the addition made on account of Section 14A disallowance is illegal, bad in law and without jurisdiction. The same is illegal in the absence of any satisfaction recorded by the AO and also the same is illegal worked out/wrong computed and highly excessive. It is not as per the mandate of law."

4. At this stage only ground no. 5 was pressed and considering the same to be pure question of law, the same stands admitted. In regard to this ground no. 5 during the course of hearing following orders were passed on 14.05.2024, 20.05.2024 and 21.05.2024, respectively:-

14.05.2024

"When the matter was called out, Ld. Representative for the assessee submitted that the compliance to the direction of the Bench dated 29.11.2023 with regard to the approvals granted by the competent authority u/s 153D of the Act is still awaited. In response, the Ld. CIT-DR sought more time, as according to him, the concerned officer from the field was yet to respond.

Considering that sufficient time has lapsed and even now, the Ld. CIT DR has not put forth any time frame for compliance, we deem it fit and proper to direct the AO to appear in person on 20th May, 2024 and explain reasons for the delay. Accordingly the

Registry is directed to notify the said case for hearing on 20th May, 2024. Both parties informed in the open court."

20.05.2024

"In continuation of the proceedings dated 14.05.2024, the Assessing Officer, Shri Ankit Mishra appeared and orally submitted the reasons for delay in complying with the directions of the earlier Bench dated 29.11.2023 with respect to the approval granted by the Competent Authority u/s. 153D of the Act.

The Assessing Officer is required to submit a factual Report accordingly, and the Registry is directed to stand over the case to 21.05.2024 for appropriate orders. Both parties informed in the Court."

21.05.2024

"Pursuant to the earlier directions dated 20.05.2024 of the Bench, the Ld. CIT (DR) placed a copy of Report filed by the AO concerned (Shri Ankit Mishra) ACIT, CC-02, Delhi, received by email, with regard to 153D approval letter of the Range Head for the perusal and consideration of the Bench. After perusing the said report, the matter is listed for hearing on 22.05.2024. Both parties informed in the Court."

5. Learned AR has heavily relied on the judgment of Hon'ble Delhi High Court in the case of Rajsheela Growth Fund (P) Ltd. vs ITO ITA No. 124/2020 and other judgment dated 08.05.2024 to contend that as there is no order available with the Department for the purpose of section 153D of the Income Tax Act 1961, presumption has to be drawn that no such order was passed and in the absence of such order the assessment concluded in the relevant assessment years under section 153A read with section 143(3) of the Act are void.

6. Learned DR has although tried to defend the case of the revenue on this count by referring to the concluding para 7 of the assessment order, and submit that there is reference of a letter No. Jt.CIT/C.R-1/153D Appr./2016-17/1025 dated 26.12.2016, by which approval was given, so it is not correct to contend that there was no approval under section 153D of the Act.

7. We have given thoughtful consideration to the aforesaid facts and circumstances and are of the considered view that it is now settled proposition of law that prior approval of competent authority under section 153D of the Act is mandatory and same is required to pass rigor of the law, to show that the approval was granted after due consideration of the assessment record and it was not a mechanical approval. In spite of giving reasonable and sufficient opportunities to the department AO has failed to produce any copy or other evidence of existence of the approval. That only gives rise to a presumption that there was no approval at all. In the absence of same no conclusion

can be drawn as to if the approval was in accordance with law or not but to hold that the assessments in hand were concluded without the requisite approval u/s 153D of the Act.

8. Thus we are inclined to allow this additional ground no. 5, but with a caveat that, in case department is able to lay hand on any evidence showing existence and content of approval, application may be filed for re-calling the this order and to contest this issue afresh on merits along with other issues raised in respective appeals.

9. In the result the appeals of the assessee are allowed and the appeals of the revenue are dismissed.