

(2012) 01 DEL CK 0323
In the Delhi High Court
Case No : ITA 1991 of 2010

CIT

APPELLANT

Vs

Regency Park Property Management Services Pvt. Ltd.

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 1 AD 917 : (2012) 186 DLT 792

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Rashmi Kapoor, for the Appellant;

Judgement

1. The present appeal by the Revenue u/s 260A of the Income Tax Act, 1961 (Act, for short) impugns the order dated 1st January, 2010 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in ITA No. 2812/Del/2008 and relates to assessment year 2005-06.

2. The impugned order passed by the tribunal allows the appeal filed by the respondent-assessee and quashes/set asides the order dated 1st July, 2008 passed by the Commissioner of Income Tax (CIT, for short) u/s 263 of the Act. Having heard learned counsel for the parties, we frame the following substantial question of law:

"Whether the Income Tax Appellate Tribunal was right in setting aside/quashing the order dated 1st July, 2008 passed by the Commissioner of Income Tax u/s 263 of the Income Tax Act, 1961?"

3. We have heard learned counsel for the parties and proceed with our decision.

4. Few facts may be noticed. The respondent-assessee had given bid for purchase of a commercial plot for construction of a shopping mall in Vasant Kunj, New Delhi to DDA on 15th December, 1993. The bid being the highest, the respondent-assessee deposited 25% of the bid amount on 15th December, 2003. The entire sale consideration was also paid during the period relevant to the

assessment year 2005-06 but the perpetual lease deed was subsequently executed on 4th October, 2006.

5. The tribunal has held that execution of the perpetual lease deed is not relevant and material for deciding whether the respondent assessee has commenced business activities. The tribunal has held that the only business activity, which the respondent company has undertaken, is to purchase the said commercial plot and develop/carry out construction.

6. The tribunal has quashed the order u/s 263 of the Act holding that the advertisement and publicity expenses of Rs. 28,29,235/- relating to the commercial plot have to be allowed in the assessment year in question. The tribunal has further held that the CIT had erred in exercising revisional power for the second reason, i.e., non-inquiry by the Assessing Officer with regard to squared up loans.

7. CIT had not exercised power u/s 263 of the Act on the ground that the business activities of the respondent-assessee had not commenced but for the following reasons recorded in the order dated 1st July, 2008:

"In the instant case, the assessee has not disclosed which method assessee has followed. It appears that assessee might be following the "completion method" as assessee has almost capitalized all expenses except advertisement and some other expenses. Since the assessee has only one project in hand during the year, all the expenses that are claimed in P&L Account represents the cost that are attributable to contract activity and has to be allocated to the contract and not to be allowed as revenue expenditure during the year. Thus, AO's order allowing advertisement expenses are erroneous as AO has not enquired this aspect at all."

8. CIT had also specifically referred to Accounting Standard 7 and observed that the two modes are specified in the said Accounting Standard, namely, completion method and percentage method. CIT had recorded that the Assessing Officer had not dealt with and examined whether the respondent-assessee was following completion method or percentage completion method and whether or not the said expenditure could be claimed as an expense in the assessment year in question. Thus, there was error on the part of the Assessing Officer in not making verification and inquiries, which were required and the assessment order was prejudicial to the interest of the Revenue. The tribunal has completely ignored the said aspect in the impugned order and has proceeded on an entirely different basis which was not edifice and foundation of the order passed by the CIT u/s 263 of the Act.

9. The second reason stated by the CIT was that the Assessing Officer had failed to examine and inquire into fresh loans amounting to Rs.11,92,13,195/-. The CIT observed that no inquiry was conducted and the Assessing Officer had not examined whether this amount was squared up or not. The Assessing Officer concluded the proceedings in a hasty manner as the assessment proceedings commenced on 4th October, 2007 and were completed on 30th November, 2007.

The assessment order merely records that nothing adverse had come to notice.

10. It is well settled that failure to conduct necessary inquiry and investigation makes an order erroneous as the Assessing Officer is required to act as an Investigator. Such an order is also prejudicial to the interest of the Revenue. The loan amount is substantial. The CIT has held that inquiries were necessary and required but were not made by the Assessing Officer. In these circumstances, we feel that on the second ground also the order passed by the tribunal cannot be sustained.

11. The CIT has not expressed final or conclusive opinion on the two aspects. The matter has to be examined by the Assessing Officer and only if the Assessing Officer is satisfied any addition will be made. It is obvious that the respondent-assessee has a right to produce relevant documents and material before the Assessing Officer and explain their stance and position. It cannot be presumed that the Assessing Officer will ignore the evidence and material.

12. In view of the aforesaid findings, we answer the question of law in negative and in favour of the Revenue and against the respondent-assessee. There will be no order as to costs. We, however, clarify that we have not expressed any opinion whether or not any addition by the Assessing Officer would be justified.