

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य एव संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.196/JP/2020
निर्धारण वर्ष/Assessment Year : 2015-16

M/s. Agencies Rajasthan Pvt. Ltd. A-2, Bangur House, Prithvi Raj Road C Scheme, Jaipur	बनाम Vs.	The Pr.CIT Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA5667 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya, Advocate &
Shri Hemang Gargieya, Advocate

राजस्व की ओर से / Revenue by: Shri B.K. Gupta, CIT- DR

सुनवाई की तारीख / Date of Hearing : 08/09/2020
उद्घोषणा की तारीख / Date of Pronouncement: 11/09/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against order of Id. Pr.CIT (A), Jaipur dated 24.01.2020 for the Assessment Year 2015-16 passed under section 263 of the Income Tax Act, 1961 (in short the "Act") on the grounds mentioned hereinbelow.

“1. The impugned order dated 24-01-2020 passed u/s 263 of the Act by the Id Pr.CIT, Jaipur is barred by limitation and hence the same is prayed to be quashed.

2. The Id Pr.CIT, Jaipur erred in law as well as on the facts of the case in invoking the provisions of Section 263 of the Act and therefore,

the impugned order dated 24-01-2020 passed u/s 263 of the Act kindly be quashed.

3. The Id Pr.CIT, Jaipur erred in law as well as on the facts of the case in assuming jurisdiction u/s 263 of the Act by wrongly and incorrectly holding that the AO failed to initiate penalty proceedings u/s 271(1)© of the Act, hence the assessment order passed by the AO on dated 30-12-2017 u/s 143(3) was erroneous and prejudicial to the interest of Revenue. The very assumption of jurisdiction is contrary to the provisions of law and facts on record. Hence, the proceedings so initiated u/s 263 of the Act and the impugned order dated 24-01-2020 deserves to be quashed.’’

Due to prevailing COVID-19 pandemic condition, the hearing of the appeals are concluded through video conference.

2.1 Brief facts of the case are that assessment u/s 143(3) of the Act was completed on 30-12-2017 by the AO and thus the AO made the addition / disallowance under different heads. Later on, the Id. Pr.CIT considered that the AO had failed to initiate the penalty proceedings u/s 271(1)© of the Act despite recording of clear cut findings about the bogus nature of the short term capital loss claimed by the assessee. Therefore, the Id. Pr. CIT after providing adequate opportunity of hearing to the assessee invoked the provisions of Section 263 of the Act vide order dated 24-01-2020 by holding that the order passed by the AO u/s 143(3) of the Act was erroneous insofar as it is prejudicial to the interest of Revenue as the AO has had failed to initiate the penalty proceedings u/s 271(1)© of the Act.

2.2 We have heard the Id. counsels for both the parties and both parties have addressed their counter arguments as well as have also placed on records/ judgements supporting their cause. However, at this state, we are not inclined to go in detail regarding the merit of the order passed u/s 263 of the Act by the Id. Pr. CIT, because the glaring fact has been brought before us that ITAT Coordinate Bench, Jaipur had already deleted the entire addition mainly with respect to which the Id. CIT (Adm) invoked Section 263 of the Act. Since the very additions are not in existence at this stage, therefore, sustaining the present order of Id. Pr.CIT u/s 263 of the Act is not in accordance with law. However, the Id. DR submitted before us that they have challenged the order passed by the ITAT Jaipur bench before the Hon'ble Rajasthan High Court as ITAT has wrongly deleted the addition.

2.3 Be that as it may, no order of Hon'ble Rajasthan High Court staying operation of the order of ITAT Jaipur Bench in deleting the addition has been placed before us. Therefore, in such circumstances as of now, there are no additions in existence as those very additions on the basis of which the Id. Pr. CIT had invoked the provisions of Section 263 of the Act had already stood deleted by the ITAT Coordinate Bench,

Jaipur. Therefore, we allow the present appeal of the assessee and set aside the order passed u/s 263 of the Act by the ld. Pr. CIT under peculiar facts and circumstances of the case. However, we give liberty to the Department to initiate appropriate proceedings in case the order passed by the ITAT Coordinate Bench, Jaipur deleting the addition is modified/reversed by Hon'ble Rajasthan High Court at any future date. In this view of the matter, the appeal of the assessee is allowed.

3.0 . In the result, the appeal of the assessee is allowed in terms indicated hereinabove.

Order pronounced in the open court on 11/09/2020.

Sd/-
(रमेश सी.शर्मा)
(Ramesh C. Sharma)
लेखासदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 11 /09/2020.

*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Agencies Rajasthan Pvt. Ltd. Jaipur
2. प्रत्यर्थी / The Respondent- The Pr.CIT, Jaipur
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File {ITA No. 196JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar