

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.136 and 137 /Bang/2020
Assessment years : 2014-15 and 2015-16

M/s. Akarsh Residence Pvt. Ltd., No.10, Vittal Mallya Road, Bengaluru – 560 001. PAN : AAICA 0191 P	Vs.	DCIT, Circle – 2 [1][1], Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Suman Lunkar, C. A.
Revenue by	:	Shree Muzaffar Hussain, CIT DR
Date of hearing	:	25.08.2020
Date of Pronouncement	:	28.08.2020

ORDER

Per A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee and these are directed against two separate orders of learned CIT(A)-11, Bengaluru, both dated 30.12.2019, for Assessment Years 2014-15 and 2015-16. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee are as under:

ITA No.136/Bang/2018

1. *The learned Commissioner of Income-tax (Appeals) has erred in dismissing the appeal and hereby confirming the order passed by Assessing Officer. The order passed by learned assessing officer being bad in law and void-ab-inito was required to be quashed instead of being confirmed. .*
2. *In any case, the learned Commissioner of Income-tax (Appeals) should have quashed the order, as the order passed by Assessing Officer was without properly assuming the jurisdiction and without properly complying with the law. The Assessment Order being bad in law and is to be quashed.*
3. *In any case, the learned Commissioner of Income-tax (Appeals) failed to appreciate that the assessing officer had not properly assumed the proper jurisdiction u/s. 153C of I.T. Act. 1961. In the absence of the assumption of proper jurisdiction proper satisfaction note, the assessment order passed by Assessing Officer being bad in law and void-ab-inito required to be quashed.*
4. *In any case, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of Assessing Officer of not allowing the setoff of Brought forward losses. The appellant is entitled to set off of brought forward losses and the same is to be allowed to appellant.*
5. *The learned Commissioner of Income-tax (Appeals) was erred in confirming the levy of interest u/s. 234B & 234C. The interest levied being erroneous is to be deleted.*
6. *In view of the above and on the grounds to be adduced at the time of hearing it is requested that the impugned order passed by the Assessing Officer be quashed or at least the appellant be held entitled to set off of brought forward losses and the interest levied is also to be deleted.*

ITA No.137/Bang/2018

1. *The learned Commissioner of Income-tax (Appeals) has erred in dismissing the appeal and hereby confirming the order passed by Assessing Officer. The order passed by learned assessing officer*

being bad in law and void-ab-inito was required to be quashed instead of being confirmed. .

2. *In any case, the learned Commissioner of Income-tax (Appeals) should have quashed the order, as the order passed by Assessing Officer was without properly assuming the jurisdiction and without properly complying with the law. The Assessment Order being in bad in law and is to be quashed.*
3. *In any case, the learned Commissioner of Income-tax (Appeals) failed to appreciate that the assessing officer had not properly assumed the proper jurisdiction u/s. 153C of I.T. Act, 1961. In the absence of the assumption of proper jurisdiction proper satisfaction note, the assessment order passed by Assessing Officer being bad in law and void-ab-inito required to be quashed.*
4. *In any case, the learned Commissioner of Income-tax (Appeals) has erred in confirming the action of Assessing Officer of not allowing the credit of Rs.4,95,60,815/-On proper appreciation of fact and law applicable the appellant is entitled to credit for MAT and the same is to be allowed to appellant.*
5. *The learned Commissioner of Income-tax (Appeals) was erred in confirming the levy of interest u/s. 234B & 234C. The interest levied being erroneous is to be deleted.*
6. *In view of the above and on the grounds to be adduced at the time of hearing it is requested that the impugned order passed by the Assessing Officer be quashed or at least the appellant be held entitled to set off of brought forward losses and the interest levied is also to be deleted.*

3. At the very outset, it was submitted by learned AR of the assessee that in these two appeals, the issue involved on merit is regarding set off of brought forward losses in Assessment Year 2014-15 and non-allowance of MAT credit under section 115JAA in Assessment Year 2015-16 and decision on both these issues on merit depends upon the decision of CIT(A) in earlier four years i.e. Assessment Years 2010-11 to 2013-14 for which the first appeal is still pending before learned CIT(A). In this regard, she drawn our attention to page No.135 of the Paper Book filed by her for Assessment Year 2014-15

and pointed out that this is the screenshot of the website of the Department as per which it can be seen that first appeal proceedings for these four years i.e., Assessment Years 2010-11 to 2013-14 are pending. It was her submission that under these facts, the issue on merit should be restored back to the file of CIT(A) for a decision simultaneously with the decision in the first appeal of the assessee for these four years i.e., Assessment Years 2010-11 to 2013-14.

4. She also submitted that there is one technical issue involved in both these years which is raised by the assessee as per ground No.3 before the Tribunal in both years and this issue is regarding assumption of jurisdiction by the AO under section 153C of the Income Tax Act, 1961 (herein called 'the Act'). Regarding this issue, she submitted that paras 12 to 14 of the order of learned CIT(A) for Assessment Year 2014-15 are relevant and in Assessment Year 2015-16, the decision of learned CIT(A) is also on the same line. She pointed out that in these paras, it is noted by learned CIT(A) that search was carried out in the premises of M/s. Adarsh Developers and in search, certain incriminating documents were found and seized and these documents had a bearing on the income of this assessee and therefore, the AO of the searched person M/s. Adarsh Developers have recorded satisfaction and after recording satisfaction, forwarded seized material to the AO of the assessee and thereafter only, the AO of the present assessee has issued notice under section 153C of I T Act on 19.09.2017 and thereafter, further notices were issued under sections 143(2) and 142(1) of the Act. It was her submission that this is the claim of the assessee that satisfaction recorded by the AO of the searched person was not proper and therefore, the present AO has not assumed valid jurisdiction. Learned DR of the Revenue supported the orders of the authorities below on all the issues including technical issue and the issues on merit in both these years.

5. We have considered the rival submissions. First of all we reproduce paras 12 to 14 from the order of CIT(A) for Assessment Year 2014-15. These paras read as under:

“12. As mentioned above, during search at the premises of M/s Adarsh Developers incriminating documents were found and seized. Since incriminating documents had a bearing on the appellant's total income. the Assessing Officer of M/s Adarsh Developers after duly recording his reasons and after recording his satisfaction. forwarded seized materials to the Assessing Officer of the appellant M/s Akarsh Residence Pvt ltd. The Assessing Officer thereafter proceeded and recorded his satisfaction and issued notice u/s 153C dated 19/09/2017.

13. It is noted that appellant filed return on 28/09/2017 in response to notice issued u/s 153C. Thereafter, the AO issued statutory notice u/s 143(2) dated 10/10/2017 and notice u/s 142(1) along with a questionnaire dated 02/11/2017.

*14. In view of the above facts, the contention of the appellant that there was lack of jurisdiction, that legal requirements were not complied with and that principles of law were not applied is found to be frivolous, devoid of any substance, baseless and untenable. Records show that due procedure as per law was followed and that AO had jurisdiction over the case. In the light of the facts narrated in preceding paras, the contention of the appellant in **ground no 2 is rejected. The ground thus fails.**”*

6. As per the facts noted by learned CIT(A) in the relevant paras of his order as reproduced above, it comes out that search was carried out in the case of M/s. Adarsh Developers and incriminating documents were found and seized in the course of search and those incriminating documents had a bearing on the assessee's total income and therefore, the AO of the searched person has recorded his satisfaction and provided the seized material to the AO of the assessee. Under these facts, we find no infirmity in the order of CIT(A) in both years as per which it was held by learned CIT(A) that there is no merit in this claim of the assessee that there was lack of jurisdiction and

that legal requirements were not complied with and the principles of law were not applied and hence, on this issue, we decline to interfere in the order of CIT(A) on this issue in both the years and accordingly, ground No.3 is rejected in both years.

7. Regarding the issue on merit in Assessment Year 2014-15, we find that this is the claim of the assessee that the AO was not justified in not allowing the set off of brought forward losses. In this regard, we find that the Assessment Order for Assessment Year 2010-11 is available on pages 70 to 89 of the Paper Book and as per the same, the assessee has claimed loss of Rs.3,79,94,328/- but he AO made addition of Rs.2,48,41,884/- and hence, it is seen that the quantum of loss for the present year is dependent upon the decision of CIT(A) in the first appeal for Assessment Year 2010-11 in which the assessee has challenged the addition of Rs.2,48,41,884/- made by the AO under section 14A of the Act. Similarly, the Assessment Order for Assessment Year 2011-12 is available on pages 91 to 109 of the Paper Book and as per the same, the assessee claimed loss of Rs.18,60,44,134/- in this year but the AO made addition of Rs.16,87,03,704/- under section 14A of the Act and determined the net loss for that year at Rs.1,73,40,430/- and hence, the quantum of loss for the present year year is also dependent upon the decision of CIT(A) in first appeal for Assessment Year 2011-12 which is still pending before learned CIT(A).

8. For Assessment Year 2012-13, the copy of Assessment Order is available on pages 111 to 129 of the Paper Book and as per the same, the assessee claimed in the return of income of that year that there is a loss of Rs.18,10,53,509/- but the AO made a disallowance of Rs.19,72,10,394/- under section 14A and determined a positive income of Rs.1,61,56,885/- and held that the said income is set off against the brought forward loss for

Assessment Year 2010-11 and 2011-12. Hence, it is seen that the quantum of carry forward of loss in the present year is also depending upon the final decision of CIT(A) in Assessment Year 2012-13 which is still pending before CIT(A). Similarly, the Assessment Order for Assessment Year 2012-14 is available on pages 131 to 134 of the Paper Book and as per the same, the assessee declared a positive income of Rs.5,16,75,229/- which is accepted by the AO as no addition was made in this year but as against the claim of the assessee for higher amount of brought forward losses for earlier three years as noted above, the AO set off the losses determined by him as carry forward in Assessment Year 2012-13 as Rs.1,43,35,989/- and determined the net taxable income for this year at Rs.3,73,39,240/- and therefore, the final amount of carry forward of losses for the present year is also depending upon the decision of CIT(A) in the first appeal for this year and earlier three years which are still pending before CIT(A).

9. Regarding the issue in respect of not allowing MAT credit under section 115JAA, it is seen that since in Assessment Year 2014-15, tax on book profit was determined by the AO at Rs.9,37,94,385/- but regular tax under normal provision was determined by the AO at Rs.15,93,20,359/- and therefore, this is decision of both lower authorities that no MAT credit is available but since the assessee has claimed brought forward losses of Rs.35,56,72,323/- in Assessment Year 2014-15 which is held to be Nil by the AO as per the Assessment Order, the amount of MAT credit available in the present year is also depending upon the result in the earlier years which are pending before learned CIT(A). Hence, we feel it proper to restore back both the issues on merit to the file of CIT(A) for a fresh decision simultaneously with the orders of CIT(A) for Assessment Years 2010-11 to 2013-14 and in case, such appeals are already disposed of by the time these two appeals reach to CIT(A) for a fresh decision, then also he should decide the issue afresh in

the light of the decision in earlier four years. Hence, the issue on merit in both years i.e., ground No.4 in both years is allowed for statistical purposes.

10. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 28th August, 2020.

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.