IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3645 OF 2024

Shree Yashraj Real Estate Developers
Pvt Ltd, Mumbai .. Petitioner

Versus

The Additional/Joint/Deputy/Assistant
Commissioner of Income-tax/ Income-tax Officer,
Delhi & Ors .. Respondents

Mr. Madhur Agrawal with *Punit J. Shah, Atul K. Jasani, Advocates for the Petitioner.*

Mr. Dhananjay B. Deshmukh, *Advocates for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 27, 2026

P. C.

1. The above Writ Petition is filed challenging the impugned Revisional Order dated 27th March 2023 passed under Section 264 of the Income Tax Act, 1961 (for short "***I. T. Act***"). As a consequence, the quashing and setting aside and/or modifying the impugned Assessment Order dated 21st April 2021 is also sought. The facts of the present case reveal that the Petitioner filed its Return Of Income for Assessment Year 2018-19 on 30th October 2018 declaring a total income of Rs. NIL.

2. According to the Respondents, they received information from the Intelligence and Criminal Investigations (I & CI), Mumbai that the Petitioner had registered multiple Agreements with NIL consideration though the Cumulative Stamp Duty Value (SDV) of these Agreements was Rs. 4,24,25,000/-. In these circumstances, the case of the Petitioner was selected for a complete scrutiny and a Notice dated 28th September 2019 under Section 143 (2) of the I. T. Act was issued to the Petitioner. Thereafter, on 12th January 2021, 5th February 2021, 18th February 2021 and 24th March 2021, Notices under Section 142 (1) were issued to the Petitioner *inter alia* stating that as per the information available with the Income Tax Department, the Petitioner had sold various immovable properties, the cumulative Stamp Duty Value of which was Rs.4,24,25,000/- and sought details from the Petitioner about profits from these transactions. In reply to these Notices, the Petitioner, by its submission dated 1st April 2021, explained that the Petitioner had undertaken redevelopment of a building called "Ganesh Nivas" and during the captioned year, the Petitioner had executed Permanent Alternate Accommodation Agreements (PAAA's) with existing tenants to allot them area in lieu of their existing area as per MHADA, free of cost and stamp duty was paid on the same.

3. On 7th April 2021, another Notice under Section 142 (1) was issued asking the Petitioner to furnish the details of its income in accordance with the percentage completion method as per Section 43CB of the I. T. Act. Thereafter, on 16th April 2021, Show Cause Notices were issued to the Petitioner to show cause as to why the amount of Rs. 4,24,25,000/- should not be added to the income of the Petitioner. It is the case of the Petitioner that it could not file a response to the said Notices since the Director of the Petitioner looking after the matter was engaged in some personal litigation. Be that as it may, in light of there being no response by the Petitioner, on 21st April 2021, an Assessment Order was passed under Section 143 (3) read with Section 144B of the I. T. Act determining the income of the Petitioner as Rs. 4,24,25,000/-. This amount was added to the income of the Petitioner as unexplained investment under Section 69 of the I. T. Act.

4. Being aggrieved by this Assessment Order that the Petitioner preferred a Revision Application under Section 264 before Respondent No.2. Before the Revisional Authority, it was the case of the Petitioner that the impugned Assessment Order adding the amount of Rs. 4,24,25,000/- was not in accordance with law and the same therefore ought to be deleted. Thereafter, several opportunities were granted by Respondent No.2 to the Petitioner. In fact, on 10th February 2023, a Notice was issued by Respondent

No.2 directing the Petitioner to file submissions or attend in-person through the Authorized Representative on 13th February 2023. In fact, even prior to this date, Written Submissions were filed by the Petitioner before Respondent No.2. In these Submissions, it was contended by the Petitioner that the Petitioner had not sold any property during the captioned year and what were entered into by the Petitioner were only PAAA's with existing tenants to allot them an area in lieu of their existing area, free of cost and for which stamp duty was paid. To substantiate this argument, the Petitioner only produced copies of Index-II in respect of all tenants. According to the Petitioner, this Index-II itself revealed the details of the tenants and the carpet area, and also that the consideration received by the Petitioner was NIL from all these tenants. It is after this that the impugned Revisional Order under Section 264 of the I. T. Act was passed by Respondent No.2 dismissing the application filed by the Petitioner. One of the grounds on which the impugned Revisional Order was passed was that the Petitioner had failed to substantiate its claim with supporting evidence. The order further recorded that the Petitioner failed to appear during the course of assessment as well as in the revisional proceedings and failed to avail an opportunity of being heard to explain its contentions. It is in this light that the impugned Revisional Order was passed dismissing the Revision Application filed by the Petitioner under Section 264 of the I. T. Act.

5. We have heard Mr. Agrawal, the learned counsel for the Petitioner as well as Mr. Deshmukh, the learned counsel for the Revenue.

6. Mr. Agrawal fairly conceded before us that apart from Index-II, no other documents were produced by the Petitioner before the Revisional Authority to substantiate the claim of the Petitioner that it had received no income from the tenants with whom the Petitioner had entered into the PAAA's. Neither were the PAAA's brought on record before the Revisional Authority and nor was any permission of MHADA brought on record to substantiate the claim of the Petitioner that it was undertaking redevelopment activity, and for which it had entered into the PAAA's with the existing tenants. He, however, submitted that in the facts of the present case, if the Petitioner is given an opportunity to place all evidence before the Revisional Authority, he would do so within a stipulated time and the Revisional Authority can pass a fresh order after taking all this evidence on record.

7. On the other hand, the learned counsel appearing on behalf of the Revenue submitted that the order of the Revisional Authority cannot be faulted because apart from producing Index-II, no other evidence was

produced by the Petitioner to substantiate its contention. In the absence of the Petitioner producing the relevant evidence, the Revisional Authority correctly dismissed the Revision Application filed by the Petitioner, and hence, calls for no interference. Consequently, the learned counsel submitted that the Petition is devoid of merit and the same ought to be dismissed.

8. We have heard the learned counsel for the parties. We have also perused the papers and proceedings in the above Writ Petition. It is not in dispute before us that apart from Index-II being produced before the Revisional Authority, no other document was produced by the Petitioner to substantiate its contentions. Merely on the basis of Index-II, without any other supporting documents, we find that the Revisional Authority could not be faulted for dismissing the application filed by the Petitioner. However, taking into consideration that it is the case of the Petitioner that it already has all the evidence to substantiate its contentions, we are of the view that interest of justice would be served, if the Petitioner is allowed to place its material/evidence before the Revisional Authority so that the Revisional Authority can thereafter examine the evidence and pass a fresh order. This, of course, is subject to the fact that the Petitioner pay costs of Rs. 1 Lakh to the High Court Employees Medical Welfare Fund at Mumbai through RTGS.

Aswale

The bank account details of the said High Court Employees Medical Welfare Fund at Mumbai are as follows:-

> ***Account Name:*** The High Court Employees Medical Welfare Fund at Mumbai.
>
> ***Bank Name and Branch:*** Bank of India, Mumbai (Main) Branch.
>
> ***Account No:***000120110001337
>
> ***IFSC Code:*** BKID0000001.

9. It is clarified that the costs shall be paid by RTGS in the account mentioned above within a period of two weeks from the uploading of this order on the High Court website. If the costs are paid as stipulated above, the impugned Revisional Order dated 27th March 2023 shall stand quashed and set aside and the matter will stand restored back to the file of the Revisional Authority. Once the matter is restored, the Petitioner shall place all its evidence before the Revisional Authority within a period of two weeks from the date of restoration. Thereafter, the Revisional Authority shall give a hearing to the Petitioner on a date fixed and thereafter it shall pass a fresh order under Section 264 of the I. T. Act.

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10. It is needless to clarify that if the costs are not paid as stipulated above, this Writ Petition shall stand dismissed and there will be no question of any restoration of the Revision Application filed by the Petitioner under Section 264 of the I. T. Act. In the event costs are paid and the Revision Application is restored, we would request Respondent No.2 to hear the Revision Application as expeditiously as possible and preferably within a period of four months from the date of restoration.

11. We must clarify that this order is passed in the peculiar facts of the present case and shall not be used as a precedent in future cases.

12. We also hasten to add that we have not examined the merits of the contentions raised by either of the parties and the same shall be decided by the Revisional Authority on its own merits and in accordance with law.

13. The Writ Petition is disposed of in the aforesaid terms.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

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