

IN THE SUPREME COURT OF INDIA**INHERENT JURISDICTION****REVIEW PETITION (C) DIARY NO. 22394 OF 2019****IN****CIVIL APPEAL NOS. 9604-9605 OF 2018**

Commissioner of Income Tax-7,
New Delhi

... Petitioner

Versus

M/s Odeon Builders Pvt. Ltd.

... Respondent

ORDER

Delay condoned.

We have perused the review petition and find that the tax effect in this case is above Rs.1 crore, that is, Rs.6,59,27,298/-. Ordinarily, therefore, we would have recalled our order dated 17th September, 2018, since the order was passed only on the basis that the tax effect in this case is less than Rs.1 crore.

However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs.19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:

“Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs.19,39,60,866/-, is directed to be deleted.”

The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.

In these circumstances, the Review Petitions are dismissed.

.....J.
(R.F. Nariman)

.....J.
(Indu Malhotra)

**New Delhi;
August 21, 2019**

ITEM NO.1002

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

REVIEW PETITION (CIVIL) Diary No(s). 22394/2019

(Arising out of impugned final judgment and order dated 17-09-2018 in C.A. No. No. 9604/2018 17-09-2018 in C.A. No. No. 9605/2018 passed by the Supreme Court Of India)

COMMISSIONER OF INCOME TAX-7, New Delhi

Petitioner(s)

VERSUS

M/S ODEON BUILDERS PVT. LTD.

Respondent(s)

IA No. 93254/2019 - CONDONATION OF DELAY IN FILING REVIEW PETITION
IA No. 93259/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 21-08-2019 These matters were circulated today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MS. JUSTICE INDU MALHOTRA

By Circulation

UPON perusing papers the Court made the following
O R D E R

Delay condoned.

The Review Petitions are dismissed in terms of the signed order.

Pending application stands disposed of.

(R. NATARAJAN)
COURT MASTER (SH)

(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)