

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 525/JP/2023  
निर्धारणवर्ष/AssessmentYear : 2017-18

Wholery Infrastructure Private Ltd. Plot No. 1, Room No.5, Admin Block Korital Food Park, Cable Nagar, Ladpura, Kota	बनाम Vs.	The DCIT Circle-2 Kota
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAECD 8263 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal, CA  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 27/09/2023  
उदघोषणा की तारीख / Date of Pronouncement: 30/10/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A) dated 19-06-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2017-18 wherein the assessee has raised following grounds of appeal.

“1. On the facts and in the circumstances of the case, the order CIT (A) erred in summarily dismissing the appeal of the appellant, which was filed against the order of Id. AO passed u/s 154 of 1. Tax Act, by holding that the application filed by the appellant u/s 154 of the

Income Tax Act, 1961 before the Id. AO has no legal validity. It is also contented that:-

1.1 the Id. CIT (A) as well as Id. AO, both the authorities erred in not appreciating the provision of the law, that the application filed by Appellant u/s 154 of the Act was for rectification the order passed u/s 139(9) of the Act and as per provision of section 154(1)(a) of the Act the mistake apparent in such order is duly rectifiable.

1.2 The Id CIT(A) erred in holding that application filed by the assessee u/s 154 has no legal validity as the assessee has moved application against the return which has been declared invalid and defective and nonest u/s 139(9). The declaration of defective return was made by CPC by an order passed u/s 139(9) of 1.Tax Act, so this order can be rectified u/s 154 of 1.Tax Act.

1.3 the order passed by Id. AO was perverse, arbitrary and passed in utter disregard to principal of natural justice without providing the opportunity of being heard and passing a non-speaking and non-specific order and CIT (A) further erred in dismissing the appeal filed by applicant in summary manner.

1.4 the order sought to be rectified u/s 154 of the Act was passed u/s 139(9) of the by DCIT, CPC-Bangalore by holding that *"Tax payer has shown gross receipt or income under the head "Profit and gains of Business or Profession" more than Rs. 1 crore, however, Part A of the Profit and Loss Account and/or Balance Sheet Have not been filled and/or the books of accounts have not been audited."* and this order was passed without considering the fact that the receipt from Business was of Rs. 69,43,977/- only, which is below Rs. 1 crore as such the Appellant was not required to get his accounts audited u/s 44AB of the Act. This was the mistake apparent from the face of record and was duly rectifiable u/s 154 of the Act. The CIT (A) and Id. AO both the authorities did not considered to this vital fact and summarily rejected the plea of the applicant.”

21 Brief facts of the case are that the assessee filed an application for rectification u/s 154 of the IT Act, 1961 stating for rectification of mistake of law

apparent in the order passed by the DCIT, CPC, Bangalore on 01.03.2019 for invalidating the return filed by the Assessee for AY 2017-18. The application of the assessee had been considered by the AO who on perusal of application filed by the assessee found that order u/s 139(9) has been passed by the Ld DCIT, CPC, Bangalore on 01.03.2019 treating the return as invalid return with remarks as "In spite of being afforded adequate opportunities, the Assessee has not rectified all the aforementioned defects noticed in the return of income. Accordingly, as per the provisions of Section 139(9) of the Income Tax Act, 1961, the return of income for AY 2017-18 filed by the on 21.03.2018, vide Acknowledgement No. 473392361210318 is treated as invalid return". Hence the AO rejected the application of the assessee with following narration.

*‘‘In view of above, since this is not the mistake apparent from record and due to invalid return for the AY 2017-18, the application for rectification u/s 154 filed by the assessee is hereby rejected.*

2.2 In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee by observing as under:-

‘‘5. Appellate decision:-

The appellant has raised four grounds of appeals which are inter-related to grievance that Ld. Assessing Officer has erred in passing rectification order u/s 154 of the Income Tax Act, 1961. Since all the grounds are dealing with order passed u/a 154 of

the IT Act, 1961, therefore, I am inclined to adjudicate all the grounds together.

Further, the appellant has filed the said appeal with delay of 13 days. In this regard the appellant has contended that Income Tax Department has launched in Income Tax Portal in June, 2021 and there were tremendous technical glitches in new portal. The appellant has also filled grievance on 12-07-2021 on e-filing portal vide G. No. 641052. The appellant has also given reference of CBDT circular no. 10/2021 and order of Hon'ble Supreme Court in suo-motu Writ Petition (Civil) No.3/2020 dt. 27-01-2021 regarding the limitation period stand extended on account of Covid pandemic till further order. That after considering the facts and circumstances of the case, delay of 13 days has been condoned.

The assessee has raised ground of appeal with the grievance that Ld. Assessing Officer has erred in passing rectification order u/s 154 of the Income Tax Act, 1961. In this regard assessee has stated that

*1. That the Ld. AO has passed the order u/s 154 of the Income Tax Act, 1961 rejecting the application of the appellant and not rectifying the mistake apparent on record is perverse arbitrary and passed in utter disregard to natural justice.*

*2. That the order passed by the Ld. DCIT, CPC Bangalore dated 01.03.2019 is mistake of law apparent on record in as much as there was no applicability of section 44AB in the case of Appellant thereby the invocation of section 139(9) on the ground applicability of section 44AB is mistake of law apparent on record.*

In this regard, the facts and circumstances of above case and judgments was carefully perused and considered and it was found that the appellant has filed the return of income u/s 139(1) of the Income Tax, 1961 and CPC has issued the notice of defective return u/s 139(9) of the Income Tax Act, 1961. The appellant has not Corrected the defect raised by CPC in due time and in the result, the return filed u/s 139(1) has been treated as invalid. The appellant has filed application u/s 154 of the Income Tax Act, 1961 before the AO. In this regard, it is

important to mention here that the AO can only rectify the below mistake u/s 154 of the Income Tax Act, 1961:

a) amend any order passed by it under the provisions of this Act

(b) amend any intimation or deemed intimation under sub-section (1) of section 143 of the Income Tax Act, 1961

In this case, the rectification application filed by the appellant u/s 154 of the Income Tax Act, 1961 before the Ld. AO has no legal validity, as the assessee has moved application u/s 154 of IT Act, 1961 against the return which has been declared invalid and defective and nonest u/s 139 (9) of IT Act, 1961 and such type of declaration by CPC cannot be subject matter of rectification by AO as per the provision of section 154 of IT Act, 1961. Therefore, keeping in view of the above facts and circumstances of the case, the ground of the appeal is dismissed.

6. In the result, the appeal of the assessee is dismissed.”

2.3 During the course of hearing, the ld. AR of the assessee submitted that the order passed by CPC u/s 139(9) of the Act was having the apparent mistake of law which resulted the wrong invalidation the return of the assessee. Thus both the lower authorities rejected the appeal of the assessee without any rhyme and reasons. The detailed written submission advanced by the ld. AR of the assessee is as under:-

## 2. Submission of Assessee on Grounds of Appeal: -

### 2.1 Order passed by CPC u/s 139(9) of the Act against the provisions of law treating the valid return as defective

The DCIT, CPC passed the order u/s 139(9) of the Act, on 01.03.2019, wherein the return filed by the assessee was treated as invalid for the following reason: -

*“Tax Payer has shown gross receipt or income under the head “profit and gains of Business or Profession” more than Rs. 1 Crore, however Part A of the Profit and Loss Account and/or Balance Sheet have not been filed and/or the books of accounts have not been audited.”*

Admittedly, the notice issued by CPC, to remove the defects mentioned in such notices, could not be responded by the assessee as such communication because the same were not sent on E-mail, which were inadvertently left to be accessed by the assessee. However, the CPC passed the order against the provisions of law.

## **2.2 The gross receipts from the business is less than Rs. 1.00 crore, hence not require to get its account audited u/s 44AB of the Act:-**

As per section 44AB a person carrying on business, if his total sales, turnover or gross receipts (as the case may be) in business for the year exceed or exceeds Rs. 1 crore is compulsorily required to get his accounts audited.

The gross receipt of the assessee from the business carried out by the assessee was not more than to Rs. 1 Crore, therefore the assessee was not required to get his accounts audited u/s 44AB of the Act. In this regard the reference is drawn at Page 10 of ITR form **(Copy at PB Page 11) and Profit and Loss A/c at PB page 58** and on perusal to that your honour will find that the revenue from operation i.e. from business operation was of Rs. 69,43,977/- only, which is less than to Rs. 1 Crore. The other receipts of Rs. 74,58,325/- was *“Profit on Sales of Fixed Assets”*, which for the purpose of section 44AB of the Act cannot be included in gross receipts of the business.

In this regard the kind attention is drawn towards the Guidance Note on Tax Audits under section 44AB of the Act issued by ICAI and on perusal of Para 5.13 of the Guidance note **(Copy at PB Page 89)** it is apparent that the Sales proceeds of Fixed Assets would not form part of gross receipts in business for the purposes of section 44AB of the Act.

## **2.3 Mistake of CPC is curable u/s 154**

Since, the assessee was not required to get its accounts audited u/s 44AB of the Act and in the order passed u/s 139(9) of the Act, it was wrongly held that the books of accounts have not been audited. Therefore, this was an apparent mistake of law which is well apparent from the record and duly curable u/s 154 of the Act. For the sake of ready reference, the provisions of section 154(1) is reproduced as under: -

*[(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,-*

*(a) amend any order passed by it under the provisions of this Act ;*

*[(b) amend any intimation or deemed intimation under sub-section (1) of section 143.]]*

*[(c) amend any intimation under sub-section (1) of section 200A.]*

*[(d) amend any intimation under sub-section (1) of section 206CB.]*

As per the provisions of section 154 (1)(a), the apparent mistake in order passed u/s 139(9) is duly rectifiable.

Since, the CPC passed the **order u/s 139(9) of the Act** and there was apparent mistake of law in finding given in such order, therefore the same was duly rectifiable u/s 154 of the Act. Since in the E-portal, the mechanism of filing of rectification request to CPC is available only for order passed by it u/s 143(1) of the Act (**Communication from I.Tax Portal that rectification of order is available only for the order passed by CPC u/s 143(1) is enclosed**) and because CPC is supplement authority of Jurisdictional Assessing Officer, therefore to rectify this mistake of law, whereby the return of the assessee treated invalid on wrong footing, the assessee filed the application u/s 154 of the Act, 1961 to DCIT, Circle-2, Kota (i.e. jurisdictional Assessing Officer) on 21.06.2021. **(Copy at PB Page 68 to 70)**. In this application the assessee did not seek any rectification in the return filed by it but he sought rectification in the order passed u/s 139(9) of the Act and the rectification of apparent mistake in any order is well within the scope of section 154 of the Act.

#### **2.4 The Id AO rejected the application filed by the assessee u/s 154 in summary manner:-**

The Id. AO rejected the application filed by the assessee in very summary manner by holding that (i) this is not the mistake apparent from record and (ii) due to invalid return for the AY 2017-18, the application filed by assessee rejected. In this regard it is submitted that these finding of Ld. AO are perverse and not in accordance the provisions of law for the following reasons: -

i) In the order passed by Ld. A.O. no where it has been mentioned that why the mistake pointed out by assessee in order passed u/s 139(9) of the Act is not mistake apparent from record. The Id. DCIT, CPC by misinterpreting the law wrongly held that the assessee was liable to get its accounts audited as its receipt was more 1 Crore, while from the ITR of the assessee, which was on record it was well apparent that the business receipts of the assessee were less than to Rs. 1 Crore, therefore it was not required to get its accounts audited u/s 44AB of the Act. Thus, the order u/s 139(9) was passed by giving the wrong finding and such fact is duly verifiable from the ITR of the assessee. If an order is passed by giving wrong finding or against the provisions of law, which are which is apparent from the record, then the authorities are bound to rectify such mistakes either suo-moto or as and when the same brought in their knowledge. This can only be done by passing the order under section 154 of the Act and thus the Id. AO wrongly held that this is not the mistake apparent from record and also no cogent reason behind to this finding has been given.

ii) Since, the assessee did not seek any rectification in the return, which has been treated as invalid but it sought rectification in the order passed u/s 139(9) of the Act, therefore the rectification application filed by the assessee was noting to do with the invalid ITR and the Ld. AO wrongly held that due to invalid return for the AY 2017-18 the rectification application is rejected. The Ld. A.O failed to appreciate that if the

apparent mistake is in the finding of the order passed u/s 139(9) of the Act, same is curable u/s 154. Since there is no defect in the ITR filed by the assessee and it is a valid ITR.

2.5 Against the action of Id. AO the assessee moved an appeal before CIT (A) and unfortunately it could not get success there also. The appeal of the assessee was dismissed by CIT (A) giving the perverse findings that the assessee has moved application u/s 154 of the Act against the return which has been declared invalid while the fact is that the assessee never moved any application against the return filed by it. It moved the application against the order by which the return was declared invalid. Further, the order passed u/s 139(9) of the Act is being held by the CIT (A) as declaration by CPC, while the same is not a declaration but it is an order which is apparent from the heading of the order sent by CPC wherein it is mentioned "ORDER U/S 139(9) OF THE INCOME TAX ACT, 1961 TREATING THE RETURN AS INVALID RETURN" **(Copy at PB Page 67)**. Since, the order passed u/s 139(9) is duly rectifiable as per provisions of section 154 (1)(a) of the act, therefore the Id. CIT (A) wrongly held that the same is not subject matter of rectification by AO as per the provisions of section 154 of IT Act, 1961.

2.6 In view of the above submission it is submitted that, the order passed by CPC u/s 139(9) of the Act was having the apparent mistake of law, which resulted the wrong invalidation the return of the assessee. The Id. AO as well as CIT (A) also wrongly rejected the plead of the assessee without any plausible reason. The humble assessee prays your honour kindly to held the return filed by the assessee is a valid return.

**2.7 The assessee rely on the following decisions: -**

**2.7(i) Hon'ble Mumbai ITAT in the case of V. K. Patel Securities Pvt. Ltd V/s ADIT-CPC, Bangalore in ITA No. 1009/MUM/2023 dated 20.06.2023 on the identical issue gave the following finding: -**

*5. We heard Ld. D.R and perused the record. On a perusal of the Profit and Loss account of the assessee for the year under consideration, we notice that the gross business receipts was Rs.92,95,722/-, which is less than the threshold limit of Rs.1.00 crore prescribed u/s 44AB of the Act for getting the accounts audited. The Statement of Total income furnished by the assessee would show that the other income has been declared either under the head Capital gains or under the head Other Sources. Hence, there is merit in the submission of the assessee that it is not required to get its accounts audited u/s 44AB of the Act. Accordingly, we are of the view that the defect notice issued by CPC u/s 139(9) of the Act is not in accordance with law and accordingly, we quash the said defect notice, meaning thereby, the return of income filed by the assessee should be considered as valid return. In view of the above, the response given under "E-Nivaran" would get nullified. Accordingly, we direct the AO/CPC to treat the return of income filed by the assessee as valid return and process the same in accordance with law.*

The copy of judgement is enclosed with this submission.



**2.7(ii) Hon'ble ITAT Pune in the case of Mahila Seva Mandal V/s ITO (2022 (8) TMI 248). (Copy at PB Page 75 to 76).**

In this case the assessee filed its return of income for the present assessment year on-line. The ACIT (CPC), Bangalore issued communication stating the return filed on 17-06-2015 is inconsistent and defective u/s. 139(9) of the Act and requested to rectify the return within the period of 15 days from the receipt of notice. Consequently, the CPC, Bangalore passed an order u/s 139(9) by treating the return filed on 17-06-2015 as invalid return. The assessee filed an application u/s. 154 of the Act before the jurisdictional AO vide application dated 18-08-2016. The AO rejected the application filed u/s. 154 of the Act vide its order dated 27-02-2017. Aggrieved by the same, the assessee preferred an appeal before the CIT(A), wherein, the CIT(A) confirmed the order of AO. On appeal Hon'ble ITAT Pune Bench held as under:-

*“6. Heard both the parties and perused the material available on record. We note that the assessee filed its return of income on 17-06-2015. The assessee claimed application of income to its objectives to an extent of Rs.61,07,545/-, accumulation of income of Rs.18,86,808/-. The objection of CIT(A) was that the assessee claimed excess accumulation to the tune of Rs.45,84,366/- and no details regarding investments/deposits were filed with the return of income, though the said discrepancies were brought to the notice of assessee by the AO (CPC), but no compliances made by the assessee in order to rectify the said mistake. We find the rectification application u/s. 154 of the Act is placed at pages 1 and 2 of the paper book, wherein, it is noted that the assessee enclosed the details of investments/deposits for ready reference of AO and requested the AO to accept the same. The AO did not consider the same and held the return of income as invalid. The contention of ld. AR is that the assessee ready to file all the investments/deposits, because of treating return of income as invalid, the proceedings u/s. 11 will go against the assessee. We find on similar issue the Co-ordinate Bench of this Tribunal in the case of Deere & Company (supra) held that, no technicality can be allowed to operate as a speed breaker in the course of dispensation of justice. If a particular relief is legitimately due to an assessee, the authorities cannot circumscribe it by creating such circumstances leading to its denial. We find the order of CIT(A) in confirming the order of AO in treating the return of income as invalid, made the assessee remediless and there is no option to claim exemption u/s. 11 of the Act. In such circumstances, we find force in the arguments of the ld. AR that the assessee shall get an opportunity to file details of investments/deposits before the AO. Therefore, we deem it proper to remand the issue to the file of AO with a direction to treat the return of income filed by the assessee on 17-06-2015 as valid return and complete the assessment thereon. The assessee is liberty to file evidence, if any, in support of its claim. Thus, the grounds raised by the assessee are allowed for statistical purpose.”*

**2.7(iii) Hon'ble Bombay High Court in the case of Future Corporate Resources Private Limited vs DCIT, CPC and ORS. (2023 (6) TMI 1041) (Copy at PB Page 73 to 74).**

2.7(iv) Hon'ble ITAT Pune in the case of Deere and Company C/o John Deere India Private Limited v/s DCIT (2021 (11) TMI 503). **(Copy at PB Page 77 to 81).**"

On the other hand, the ld. DR supported the orders of the lower authorities below.

2.4 We have heard both the parties and perused the materials available on record. The crux of the issue is that the DCIT, CPC, Bengaluru passed an order u/s 139(9) of the on 01-03-2019 wherein the return filed by the assessee was treated as invalid for the following reasons.

*"Tax Payer has shown gross receipt or income under the head "profit and gains of Business or Profession" more than Rs. 1 Crore, however Part A of the Profit and Loss Account and/or Balance Sheet have not been filed and/or the books of accounts have not been audited."*

To this effect, the assessee filed an application for rectification u/s 154 of the Act stating for rectification of mistake of law apparent in the order passed by the DCIT, CPC, Bangalore on 01-03-2019 for invalidating the return filed by the assessee for A.Y. 2017-18 which has been rejected by the AO vide his order dated 24-06-2021 by holding as under:-

"The application of the assessee has been considered. On perusal of application filed by the assessee, it is found that order u/s 139(9) has been passed by the Ld DCIT, CPC, Bangalore on 01.03.2019 treating the return as invalid return with remarks as "In spite of being afforded adequate opportunities, the Assessee has not rectified all the aforementioned defects noticed in the return of income. Accordingly, as per the provisions of Section 139(9) of the Income Tax Act, 1961, the return of income for AY 2017-18 filed by

the on 21.03.2018, vide Acknowledgement No. 473392361210318 is treated as invalid return".

In view of above, since this is not the mistake apparent from record and due to invalid return for the AY 2017-18, the application for rectification u/s 154 filed by the assessee is hereby rejected.”

In first appeal, the Id. CIT(A) has dismissed the appeal of the assessee by holding as under:-

“In this case, the rectification application filed by the appellant u/s 154 of the Income Tax Act, 1961 before the Ld. AO has no legal validity, as the assessee has moved application u/s 154 of IT Act, 1961 against the return which has been declared invalid and defective and nonest u/s 139 (9) of IT Act, 1961 and such type of declaration by CPC cannot be subject matter of rectification by AO as per the provision of section 154 of IT Act, 1961. Therefore, keeping in view of the above facts and circumstances of the case, the ground of the appeal is dismissed.”

From the above facts of the case, it is noted that the assessee did not seek any rectification which has been treated as invalid but it sought rectification in the order passed u/s 139(9) of the Act, therefore, the rectification application filed by the assessee was nothing to do with the invalid Income Tax Return and the AO held that due to invalid return for the A.Y. 2017-18, the rectification application is rejected. It is noteworthy to mention that if the order passed by the AO u/s 139(9) of the Act contains apparent mistake then it is curable u/s 154 of the Act. Since

there is no defect in the ITR filed by the assessee, therefore it is a valid Income Tax Return. The submission of the assessee was that the order passed by the CPC u/s 139(9) of the Act was having the apparent mistake of law which resulted the wrong invalidation of return of the assessee. It is also noted that the gross receipts from the business of the assessee is less than Rs.1.00 crore then it is not required to get the accounts audited u/s 44AB of the Act. It is imperative to mention that the gross receipt of the assessee from the business carried out by the assessee was not more than to Rs. 1 Crore, therefore the assessee was not required to get his accounts audited u/s 44AB of the Act. In this regard the reference is drawn at Page 10 of ITR form (**Copy at PB Page 11**) and **Profit and Loss A/c at PB page 58** and on perusal of the record, it is found that the revenue from operation i.e. from business operation was of Rs. 69,43,977/- only, which is less than to Rs. 1 Crore. The other receipts of Rs. 74,58,325/- was "*Profit on Sales of Fixed Assets*", which for the purpose of section 44AB of the Act cannot be included in gross receipts of the business. In this regard reference is drawn towards the Guidance Note on Tax Audits under section 44AB of the Act issued by ICAI and on perusal of Para 5.13 of the Guidance note (**Copy at PB Page 89**) it is apparent that the Sales proceeds of Fixed Assets would not form part of gross receipts in business for the purposes of section 44AB of the Act. We also find that similar issues was decided by the ITAT Mumbai Bench "F" Mumbai in the case of Y.K. Patel Securities (P) Ltd. vs

ADIT-CPC, Banalore (ITA No. 1009/MUM/2023 for the assessment year) vide order dated 20-06-2023 treating the return of income filed by the assessee as valid return and thus allowed the appeal of the assessee by observing as under:-

*5. We heard Ld. D.R and perused the record. On a perusal of the Profit and Loss account of the assessee for the year under consideration, we notice that the gross business receipts was Rs.92,95,722/-, which is less than the threshold limit of Rs.1.00 crore prescribed u/s 44AB of the Act for getting the accounts audited. The Statement of Total income furnished by the assessee would show that the other income has been declared either under the head Capital gains or under the head Other Sources. Hence, there is merit in the submission of the assessee that it is not required to get its accounts audited u/s 44AB of the Act. Accordingly, we are of the view that the defect notice issued by CPC u/s 139(9) of the Act is not in accordance with law and accordingly, we quash the said defect notice, meaning thereby, the return of income filed by the assessee should be considered as valid return. In view of the above, the response given under "E-Nivaran" would get nullified. Accordingly, we direct the AO/CPC to treat the return of income filed by the assessee as valid return and process the same in accordance with law.*

*6. In the result, the appeal filed by the assessee is allowed.''*

In this view of the matter, we respectfully following the decision of ITAT, Mumabi Bench in the case of Y.K. Patel Securities (P) Ltd. vs ADIT-CPC, Bangalore on similar issue are of the view that the defect notice issued by CPC u/s 139(9) of the Act is not in accordance with law and accordingly, we quash the said defect notice, meaning thereby, the return of income filed by the assessee should be considered as valid return. Accordingly, we direct the AO/CPC to treat the return of income

filed by the assessee as valid return and process the same in accordance with law.

Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30/10/2023.

Sd/-

(राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/10/2023

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Wholery Infrastructure (P) Ltd, Kota
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-2, Kota
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.525/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar