

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SMT. BEENA A. PILLAI, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 3815/Del/2014
(Assessment Year 2007-08)**

&

**I.T.A. No. 3816/Del/2014
(Assessment Year 2008-09)**

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| Madhusudan Fiber Goods (P) Ltd. C/o Akhilesh Kumar, Advocate Chamber No. 206-07, Ansal Satyam RDC Raj Nagar Ghaziabad, UP GIR/PAN: AAECM0840R | Vs. | CCIT, Central Circle-17 New Delhi |
| (Appellant) | | (Respondent) |

Assessee by : Sh. Akhilesh Kumar, Adv.
Department by : Ms. Nirupama Katru, CIT, DR.

Date of hearing : 23.02.2017
Date of Pronouncement: 28.02.2017

ORDER

PER BEENA A. PILLAI, JM:

1. The present appeals have been filed by the assessee against the order dated 01.05.2014 and 02.05.2014 passed by Ld. CIT(A), New Delhi for assessment years 2007-08 and 2008-09 on the following grounds of appeal:

ITA No. 3815/del/2014

1. That the ex-party order of Ld, Lower Authority is bad in law as well as is against the facts and circumstances of the case.

2. That learned CIT (A) erred in framing an ex-party order without providing any proper opportunity of being heard in the peculiar circumstances of the case, especially when regular AR has visited on the last date on 24.04.14 with WS/POA to seek adjournment till 15th may but application was not entertained and instead asked to come before 10th May/2014 but when AR visited around 6th May with for hearing of all the appeals than it was communicated that ex-party order is passed In april,2014. Hence provisions of natural justice has been defeated.

3. That, Ld. CIT(A) grossly erred is sustaining the rejection of claim of compensation paid in terms of 'cancellation of agreement' as part of cost of property by holding that, assessee failed to establish how its payment of Rs. 60,13,319/- was related to the acquisition of the capital asset under consideration, though on the contrary it is held that assessee repurchased the property under said 'cancellation of agreement' which is contradictory. Hence order rejecting said claim is arbitrary.

4. That, in addition to above, CIT(A) further erred is sustaining the rejection of above against the settled law as per which betterment charges/payment for perfection of title is part of cost of asset, hence rejection of claim is against

the settled law on the issue more so when payment of compensation is not doubted.

5. That, Ld. CIT(A) grossly erred in not allowing claim of Rs. 35,83,912/- as part of cost of property for assessee but for other party while he himself first upheld the presumed notional sale to said party and further upheld notional repurchase from the same party hence such rejection of claim is contradictory and unfair.

ITA No. 3816/del/2014

1. That the ex-party order of Ld. Lower Authority is bad in law as well as is against the facts and circumstances of the case.

2. That learned CIT (A) erred in framing an ex-party order without providing any proper opportunity of being heard in the peculiar circumstances of the case , especially when regular AR has visited on the last date on 24.04.14 with WS/POA to seek adjournment till 15th may but application was not entertained and instead asked to come before 10th May, 2014 but when AR visited around 6th May with for hearing of all the appeals than it was communicated that ex-party order is passed In April 2014. Hence provisions of natural justice have been defeated.

3. That, Ld. CIT(A) grossly erred is not allowing the claim of Rs. 60,13,919/- incurred in the earlier year being compensation paid in terms of cancellation of agreement' against the settled law on the issue and against the material on the record. Hence addition to capital gain by said amount is arbitrary.*

4. That, Ld. CIT(A) grossly erred in not allowing claim of Rs.3583912/- as part of cost of property

for assessee but for other party while he himself first upheld the presumed notional sale to said party and further upheld notional repurchase from the same party hence such rejection of claim is contradictory and unfair.

5. That, Ld. CIT(A) grossly erred in not allowing payment of compounding charges Rs. 60550/-.

2. Brief facts of the case are as under:

A search was conducted at the premises of assessee on 20.10.2008 and notice under section 153A was issued, requiring assessee to furnish return of income. Assessee furnished its return of income declaring “nil” income on 23.09.2010 for the assessment years under consideration.

3. During the assessment proceedings, assessee was asked to explain existence of plot No. 2, Vasanth Kunj that has been alleged to have been sold in the previous financial year being 2006-07. Ld. AO has observed that assessee had transferred the said plot and short term capital gain tax was imposed on assessee in the immediate previous assessment year. For the years under consideration assessing officer has alleged that assessee has repurchased the same commercial building at plot No. 2, Vasant Kunj.

4. Ld. AO accordingly made addition in the hands of assessee, being cost of construction of commercial building, for assessment year 2007-08 and cost of repurchase of the

same plot for assessment year 2008-09 as short term capital gain.

5. Aggrieved by order of Ld. AO assessee preferred appeal before Ld. CIT(A), who gave partial relief to assessee.

6. Aggrieved by order of Ld. CIT(A), assessee is in appeal before us now in respect of both the assessment years.

7. Ld. AR at the outset submitted that proper opportunity was not given to assessee before Ld.CIT(A). It has been further submitted that assessment year 2006-07 being the prime year, in respect of agreements entered into by assessee, which has been set aside to Ld. CIT(A) for fresh adjudication. He thus, requested that issue in dispute may be set aside to the file of Ld. CIT(A), to decide the same afresh.

8. Ld. DR did not object the request made by Ld. AR.

9. We have perused the records placed before us and the order passed by this tribunal in assessee's own case for assessment year 2006-07. The entire issue revolves around whether commercial property being plot No. 2 situated at local shopping Centre in sector B, pocket 1, Vasanth Kunj, Delhi at measuring 112.88 square meters. Ld. AO while passing the assessment order for assessment year 2006-07 held that, assessee sold the property vide collaboration agreement dated 31.03.2006 to NCJ International Ltd., and Shachdeva Buildcon Pvt. Ltd., and whether Subsequently the

property was again acquired vide agreement dated 27.03.2007 and thereafter, sold on 02.11.2007, resulting again in short term capital gain in the year 2008-09.

10. It has been alleged by Ld. AR that assessing officer, while passing assessment order for A.Y: 2006-07, held that crucial and relevant facts had not been declared fully and truly by assessee, referring to various events that had taken place in connection with property under consideration between year 2004 to 2007 including the collaboration deed dated 31.03.2006, agreement of cancellation dated 27.03.2007 and sale deed dated 02.11.2007. Ld. AR submitted that assessee had never sold this property before 02.11.2007 and assessing officer has made addition on assumption of facts.

11. On perusal of order of this Tribunal dated 15.06.2016 passed in assessee's own case in ITA No. 3814/Del/2014 for assessment year 2006-07, it is observed that the issue has been set aside to Ld. CIT(A) for fresh consideration. We are, therefore, of the considered opinion that to serve the ends of Justice it would be proper to set aside assessment years under consideration before us also to file of Ld. CIT(A) for fresh consideration of facts.

Accordingly grounds raised by the assessee for the assessment years under consideration stands allowed for statistical purposes

In the result appeal is filed by the assessee for assessment year 2007-08 and 2008-09 stands allowed for statistical purposes.

Order pronounced in the open court on 28th February, 2017.

Sd/-

Sd/-

(PRASHANT MAHARISHI)

ACCOUNTANT MEMBER

Date:28.02.2017

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(BEENA A. PILLAI)

JUDICIAL MEMBER