

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI O.P. KANT

ITA No. 1091/Del/2013
Assessment Year: 2009-10

SPG Finvest Private Ltd., H-108, IInd Floor, New Asiatic Bldg., Connaught Place, New Delhi. (PAN: AABCS3943P) (Appellant)	vs.	ACIT, Central Circle-9, New Delhi. (Respondent)
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Assessee by: Shri Ved Jain, Adv.
Department by: Smt. Anima Barnwal, Sr. DR

Date of hearing : 21.03.2016
Date of pronouncement: 14.06.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has questioned first appellate order on the following grounds:

1. On the facts and in the circumstances of the case and in law, Learned CIT(Appeals)-XXXII, was incorrect and unjustified in accepting the assessment of the assessee at income of Rs.50,99,610 as against returned loss of Rs.69,357;
2. On the facts and in the circumstances of the case and in law, Learned CIT(Appeals)-XXXII was incorrect and unjustified to accept the approach of assessing the assessee which is against the principles 'consistency'.

2. At the outset of hearing, the Learned AR pointed out that the learned CIT(A) was not justified in passing the order ex parte. Attention was invited to the order of the learned CIT(A) whereby the assessee sought adjournments from time to time. It was submitted that the case was fixed on 6th September, 2012 and the same was adjourned *sine die* on that day on the request of the assessee. The learned CIT(A) thereafter has stated to have issued a notice on 15th October, 2012 fixing the hearing on 6th November, 2012. On that day the representative went to the office of the learned CIT(A) and the matter was not taken up and it was informed that the new notice will be issued since the matter was adjourned *sine die* at the time of the last hearing.

2.1 Thereafter the learned CIT(A) passed the order by making an observation that nobody has appeared and attended the proceedings. It was contended that the assessee has all along been serious in proceeding with the appeal as is evident from the appearance before the learned CIT(A) as stated in the order itself.

2.2 It was further stated that the learned CIT(A) has confirmed disallowance without giving any finding on merit as is evident from Para 10 where the learned CIT(A) has stated that the Grounds No. 1 to 5 are general

in nature on which no specific submissions have been made by the appellant and hence no adjudication is required thereon. It was contended that the learned CIT(A) has to record a finding on merit on each of the issue. In the absence of appeal being decided by the learned CIT(A) on merit, the order passed by the learned CIT(A) is bad and liable to be set aside. Reliance was placed on the following judgments:-

GauravGoel, Vs. ITO, Ward 1(2) (ITA No.605/Del./2012 Dated 09-04 2012, ITAT Delhi)

M/s Haryana Liquor Company. Vs ACIT (ITA No.1852/Del/2012 Dated 25 June 2012, ITAT Delhi)

3. The learned DR supported the order passed by the learned CIT(A).
4. Having gone through the order passed by the learned CIT(A), we find that first appellate order has been passed ex parte for non-appearance of the assessee on the date fixed for hearing. The Learned CIT(Appeals) has justified these actions for proceedings ex parte in view of the decisions including the decision of Hon'ble Delhi Bench of the ITAT in the case of Multiplan India – 38 ITD 320 (Del.) that the assessee is not interested in pursuing the appeal. The main issue involved in this appeal is regarding share application money whereby the AO has made the addition on the

ground that assessee has accepted this addition. As against this the contention of the learned AR was that this fact has been wrongly recorded and assessee has at no point of time agreed for this addition. Taking into consideration these aspects we deem it appropriate to set aside the order to the file of the AO. We order accordingly with this direction that the Assessing Officer will decide the issue raised in the above grounds of the present appeal afresh after affording opportunity of being heard to the assessee.

5. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14.06.2016

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 14/06/2016
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR

	Date
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	