

आयकर अपीलिय अधिकरण, इन्दौर न्यायपीठ, इन्दौर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

IT(SS) A. Nos. 69 to 72/Ind/2017  
निर्धारण वर्ष /A.Ys. : 2009-10, 2010-11, 2011-12 & 2012-13  
ITA No. 209/Ind/2017 : A.Y. 2013-14

IBD Space Infrastructure Pvt. Ltd.  
Indore

PAN – AABCI-9280N :: अपीलार्थी /Appellant

Vs

Dy. Commissioner of Income tax

(Central)-II, Indore :: प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by	Shri Devendra Bansal
राजस्व की ओर से/Revenue by	Shri Lalchand – CIT
सुनवाई की तारीख Date of hearing	4.5.2017
उद्घोषणा की तारीख Date of pronouncement	09.5.2017

**आदेश / O R D E R**

**PER BENCH**

These appeal have been filed by the assessee against the consolidated order of the learned CIT(A)-3, Bhopal, dated 11.1.2017 in First Appeal Nos. CIT(A)-e/BPL/IT-303 to 307/2015-16 for the assessment year 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14.

2. Since identical issues are involved in these appeals, we propose to decide these appeals by this consolidated order for the sake of convenience.

3. The ground nos. 1 and 2, which are common in all these appeals, are that the Commissioner of Income Tax (Appeals) was not justified in dismissing the appeals of the assessee-appellant without affording proper and effective opportunity of being heard as also in not adjudicating the appeals on merits.

4. In nutshell, the facts of the case are that search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') was carried out at the business premises of the assessee as well as at the premises of other concerns/business associated on 30.11.2012 during which various books of accounts, loose papers, etc. were seized and impounded from these premises. The assessee-appellant is a private limited company and has shown income from business of real estate, construction and development of all types of land and housing colony, etc. Notices u/s 153A of the Act were issued for the assessment years 2007-08 to 2012-13 in response to which the assessee filed returns of income. After detailed discussion

as made in the assessment orders, the Assessing Officer found that there was undisclosed income was detected during the course of assessment. The Assessing Officer, therefore, after rejecting the books of accounts, added the undisclosed income to the total income of the assessee for all the assessment years, under consideration, as discussed in the assessment orders.

5. Being aggrieved with the additions made by the Assessing Officer in all these assessment years, the assessee-appellant preferred appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) issued various notices for hearing to the assessee but the assessee did not comply with the same and as such the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer. Now the assessee is in appeals before the Tribunal.

6. Before us, the learned counsel for the assessee submitted that because of the reasons beyond its control, the assessee could not comply with the notices of hearing issued by the Commissioner of Income Tax (Appeals). He, therefore, humbly prayed that the assessee-appellant may kindly be granted one more opportunity to

represent its case before the Commissioner of Income Tax (Appeals).

On the other hand, the learned DR strongly opposed the request of the assessee on the ground that sufficient opportunity has already been provided to the assessee and as such, the assessee-appellant has no case for grant of another opportunity of hearing.

7. We have heard both the sides on this issue and have carefully considered the orders of the authorities below. We find that the Commissioner of Income Tax (Appeals) has given inasmuch as 6 opportunities to the assessee-appellant to represent its case but the assessee utterly failed to avail the same. We also note that the assessee-appellant has made request for adjournment on two occasions but both the applications for adjournment were filed after the date of hearing. In such a scenario, the Commissioner of Income Tax (Appeals) was left with no choice but to proceed to decide the appeals. Accordingly, the appeals were decided and after considering the facts and the material available on record, the Commissioner of Income Tax (Appeals) dismissed the same. However, it is a well settled principle of natural justice that no-body should be condemned unheard. Principle of natural requires that

sufficient opportunity of being heard should be provided to the assessee before deciding the issue against it. We are, therefore, of the considered opinion that since the Commissioner of Income Tax (Appeals) has decided the matter without hearing the assessees in violation of the principles of natural justice and fair play, these appeals need to be restored to his file for deciding the same after providing due opportunity of being heard to the assessees. We, therefore, following the principle of natural justice and equity, restore these appeals to the file of the Commissioner of Income Tax (Appeals) with the direction to provide the assessee-appellant one more opportunity of being heard and then to decide the appeals in accordance with law. At the same time, we also direct the assessee-appellant to remain present on the date of hearing before the Commissioner of Income Tax (Appeals) and not to seek unnecessary adjournment. We direct accordingly.

8. Since we have restored the entire appeals to the file of the learned CIT(A) for fresh adjudication as per the directions given above, other grounds of the assessee on merit become academic in nature and we are not adjudicating them.

9. In the result, all the appeals of the assessee are allowed for statistical purposes.

The order has been pronounced in open Court on 09<sup>th</sup> May, 2017.

Sd/-

लेखा सदस्य  
(O.P.Meena)  
Accountant Member

sd/-

न्यायिक सदस्य  
(C.M. Garg)  
Judicial Member

May 09, 2017

Dn/