

IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T(SS).A. No. 05/Mum/2014  
(Block period ended on 23.03.2001)

I.T.A. No. 4156/Mum/2014  
(Assessment Year : 2004-05)

Triumph Securities Ltd. Radha Bhuvan 1 <sup>st</sup> Floor, 121 Nagindas Master Road Fort, Mumbai-400 023.	Vs.	ACIT Central Circle-40 Mumbai
(Appellant)		(Respondent)

PAN No.AAACT2152P

Assessee by	Shri Neelkanth Khandelwal
Department by	Dr. P Danial
Date of Hearing	28.4.2017
Date of Pronouncement	28.4.2017

O R D E R

Per Bench :-

Both these appeals filed by the assessee are directed against the orders passed by the learned CIT(A)-36, Mumbai. The first appeal is related to the block period ended on 23.3.2001 and the second appeal is related to A.Y. 2004-05. The assessee is aggrieved by the decision of the learned CIT(A) in passing ex-parte order by dismissing the appeals in limine without disposing the issues urged on merits.

2. We have heard the parties and perused the record. Learned counsel appearing for the assessee submitted that the assessee, in fact, has sought adjournments on many occasions, since the directors of the assessee-company were busy in attending proceedings initiated by various agencies of the Government. The assessee, in fact, moved an application before the learned CIT(A) on the last date of hearing seeking adjournment but the learned CIT(A)

did not accept the same and proceeded to dispose of both the appeals ex-parte. He submitted that the assessee should be given an opportunity to present his case since the additions have been made by the Assessing Officer without following directions of the ITAT in respect of block assessment year and without properly appreciating the facts relating to A.Y. 2004-05. Learned AR submitted that the identical issue arising in some other years has since been heard by the Tribunal and decision taken therein can be conveniently applied to these two years under consideration. He further submitted that the AO had initially passed an order dated 13-07-2011 to give effect to the order passed by the ITAT, wherein he determined the total income of the assessee at NIL. Subsequently he passed another order dated 27.12.2011 to give effect to the order of the Tribunal, wherein he determined the total income at Rs.444.42 lakhs. The Ld A.R contended that the assessing officer has become functus-officio upon passing the order dated 13.7.2011 and hence the second order dated 27.12.2011 passed by him is without jurisdiction and hence the same is liable to be quashed.

3. On the contrary, learned Departmental Representative submitted that the learned CIT(A) has dismissed these appeals in limine and hence both these appeals, if at all required, should be set aside to the file of the learned CIT(A) for disposing the grounds urged on merit, provided the assessee undertakes to cooperate with the learned CIT(A). He submitted that the first order dated 13.7.2011 was passed by the AO without properly appreciating the direction given by the ITAT and hence the AO was constrained to pass the second order dated 27.12.2011 in order to correctly give effect to the order passed by the ITAT. Accordingly he submitted that the first order dated 13.7.2011 should be ignored.

4. Having heard the rival submissions, we are of the view that the issues urged in both these appeals need to be set aside to the file of the learned CIT(A), since the first appellate authority has dismissed these appeals in limine for non-appearance on the part of the assessee. In the set aside proceedings,

the assessee is at liberty to raise all the legal issues before him. Since these appeals relate to old assessment years, we are of the view that the same should be disposed of by the learned CIT(A) as expeditiously as possible. Accordingly, we set aside the orders passed by the learned CIT(A) in these appeals and restore all the issues to his file with the direction to dispose of these appeals as expeditiously as possible, preferably within a period of six months from the date of receipt of this Tribunal order. We order accordingly.

5. In the result, both the appeals filed by the assessee are treated as allowed for statistical purposes.

Order has been pronounced in the Court on 28.4.2017.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 28/4/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai