

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.3766/M/2015  
Assessment Year: 2007-08**

M/s. Aditya Construction Company, Banglow No.27, Amit Villa Charkop, Kandivali (West), Mumbai – 400 067 <b>PAN: AAMFA 8407H</b>	Vs.	ITO – 33(1)(1), Pratyakshkar Bhawan, BKC, Bandra (E), Mumbai - 400051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri N.L. Shah, A.R.  
Revenue by : Ms. Pooja Swaroop, D.R.

Date of Hearing : 22.09.2017  
Date of Pronouncement : 26.09.2017

**ORDER**

**Per D.T. GARASIA, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 27.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2007-08.

2. The short facts of the case are that the assessee filed the return of income on 23.01.2008 declaring the total income at Nil. The Assessing Officer (hereinafter referred to as the AO) issued notice u/s 148 to the assessee. But no details were filed by the assessee

before the AO. Hence, the assessment was completed u/s. 144 of the Act and made addition of Rs.97,04,000/-.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) dismissed the appeal of the assessee.

4. During the course of hearing, the Ld. A.R. submitted that assessee did not appear before the AO and before the Ld. CIT(A). Therefore, the matter was dismissed at the level of AO as well as Ld. CIT(A). He further submitted that the assessee's case was reopened and notice under section 143(2) was issued to the assessee. Assessee firm was in financial mess. Thereafter, assessee did not comply to various notices and AO has called for certain details but assessee could not submit the details and the matter was finalised. Similarly, before the Ld. CIT(A) assessee was unable to submit anything. The assessee has submitted before Tribunal the various documents and affidavit which is by way of paper book from page 1 to 43. Therefore, he submitted that considering this, the appeal may be restored to AO to pass the order afresh after considering all these documents on record and matter may be decided afresh.

5. The Ld. D.R. objected to it.

6. We have heard the rival contentions of both the parties. We find that assessee has purchased a land for consideration of Rs.1,25,00,000/- in April, 2006 from Mrs. Raut & Others for development. Thereafter, there was illegal zopadpatti and

encroachment of the property. The assessee firm has to face legal battle against zopadpattiwala tenant and ultimately the financial condition of the assessee was in mess. Therefore, assessee could not reply to show cause notice and he could not remain present before the AO and the Ld. CIT(A). Assessee has produced various documents before us by way of paper book. Therefore, in the interest of justice and fairplay, we restore this matter back to the file of AO and AO is directed to decide the matter afresh and to make a denovo assessment. AO is also directed to give opportunity of hearing to the assessee.

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

**Order pronounced in the open court on 26.09.2017.**

**Sd/-**  
**(G. Manjunatha)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(D.T. Garasia)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 26.09.2017.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.