

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

ITA No. 678/Bang/2017
Assessment year : 2008-09

Sri Subodh Agarwal, M/s. Chirag Industries, Plot No.M-5, V Cross, 1 st Stage, Peenya Industrial Estate, Bangalore - 560032. PAN : AIKPA9350R	Vs.	Asst. Commissioner of Income Tax, Circle-6(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mallaha Rao, Advocate
Revenue by	:	Shri. P. V. Pradeep Kumar, ACIT

Date of hearing	:	21.02.2018
Date of Pronouncement	:	28.02.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the CIT(A), *inter alia*, on various grounds which are as under:

1. The learned CIT (A) erred in passing the ex-parte order in the manner he did.
2. The learned CIT (A) failed to appreciate that the representative Sri R.Krishnamoorthy Advocate & Tax Consultant who filed the appeal before the CIT (A) on behalf of the Appellant passed away, and due to non-communication of the notice of hearing, none represented the matter before the learned CIT (A) and accordingly the ex-parte order passed by the learned CIT (A) without providing an opportunity to the Appellant is not in accordance with law.
3. The learned CIT (A) ought to have appreciated that on account of death of the

Appellant's representative Sri R.Krishnamoorthy, Advocate & Tax Consultant, none represented the matter before him on behalf of the Appellant which was the genuine and bona fide reason for non-representation of the matter. Accordingly, the learned CIT (A) ought to have given an opportunity to the Appellant for representing the appeal before him.

4. *The learned CIT (A) erred in upholding the addition that the gain of Rs.70,66,491/- resulting from relinquishment by the Appellant of his right, title and interest in respect of two villas for which the Appellant had entered into construction agreements with developers was in the nature of business without relevant material to support.*
5. *The learned CIT (A) further erred in upholding the addition that the sum of Rs.4,63,000/- paid as brokerage to the broker is not an admissible revenue deduction as no TDS was made on such payment in view of Section 40(a)(ia) without appreciating that the transactions for which such brokerage was paid was not in the nature of business and hence the disallowance as upheld by the CIT (A) was not in accordance with law.*
6. *The learned CIT (A) erred in upholding the view of the AO that the gift of Rs. 10,00,000/- made by the Appellant to his major daughter Manasi Agarwal by an instrument in writing and accepted by her was sham without proper material basis.
The learned CIT (A) further erred in upholding the disallowance of interest of Rs.2,53,634/- paid to the Appellant's daughter Manasi Agarwal without proper legal basis, without appreciating the fact that the borrowed sums had been used wholly and exclusively for the purpose of business and hence the entire interest is a permissible business deduction.*
8. *The learned CIT (A) erred in upholding the levy of interest under Sections 234B and 234C of the Act.*
9. *For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.*

2. During the course of hearing, the learned counsel for the assessee has invited our attention that CIT(A) has dismissed the appeal of the assessee without dealing the issue on merit and also without affording opportunity of being heard to the assessee. Therefore, in the interest of justice, the order of CIT(A) be set aside and matter be restored back to his file for readjudication of the issues raised before him.

3. The learned DR on the other hand has placed heavy reliance upon the order of CIT(A) with the submission that CIT(A) has adjudicated all the issues raised before him.

4. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that CIT(A) has recorded in his order that notice was issued

but no adjournment was sought. It is also not clear from the order of the CIT(A) whether notice of hearing was ever served upon the assessee. In the absence of categorical evidence with regard to service of notice of hearing, we are of the view that let the matter be readjudicated by the CIT(A) after affording opportunity of being heard to the assessee. We accordingly set aside his order and restore the matter to his file to readjudicate the issue raised before him after affording opportunity of being heard to the assessee.

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

Pronounced in the open court on 28th February, 2018.

Sd/-
(JASON P BOAZ)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 28th February, 2018.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. Guard file |

By order

Sr. Private Secretary,
ITAT, Bangalore.