

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI G. S. PANNU, AM AND SHRI SANDEEP GOSAIN, JM

SA Nos. 149/Mum/2018
(Arising out of ITA No. 2613/Mum/2017)
(Assessment Years: 2012-13)
And
ITA No. 2613/Mum/2017 for AY 2012-13

Shri Bharat Lakhamshi Shah 7, Ronak Bhuvan, Daftary Road, Malad (E), Mumbai-400 097	बनाम/ Vs.	ACIT-30(1) Pratyakshakar Bhavan, BKC Bandra, Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AAEPS1617D
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Prayag Jha & Prateek Jha, AR
प्रत्यर्थी की ओर से/Respondent by	:	Shri T. A. Khan, DR
सुनवाई की तारीख / Date of Hearing	:	09/03/2018
घोषणा की तारीख / Date of Pronouncement	:	09/03/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The above stay application filed by the assessee is arising out of ITA No. 2613/Mum/17 for AY 2012-13 for seeking stay of recovery of Rs. 2,15,40,893/-.

2. While considering the stay application, we have perused the file of main appeal filed by the assessee. The assessee has filed the main appeal before us

against the *ex-parte order* passed by Ld. CIT(A) dated 25.01.17. The Ld. AR as well as DR are also prepared to argue on the merits of the case. Therefore, we have decided to dispose of the main appeal along with the stay application.

3. The solitary ground raised by the assessee in the main appeal, is against challenging the order of Ld. CIT(A) in confirming additions of unsecured loan of Rs. 5,00,93,004/- u/s 68 of the I.T. Act.

4. As per the facts of the case, assessee is a builder and is engaged in the property development. During the course of assessment, AO noticed that the assessee had obtained different loans from the different parties and in this respect, AO called for confirmations in respect of these loans from the assessee. In the absence of any confirmation in respect of loans, the AO made additions of Rs. 5,00,93,004/- u/s 68 of the I.T. Act.

5. Aggrieved by the order of AO, assessee preferred the appeal before Ld. CIT(A). Since nobody appeared before Ld. CIT(A), therefore, Ld. CIT(A) passed *ex-parte order* dated 25.01.17 and **dismissed** the appeal of the assessee.

Now before us, the assessee has challenged the *ex-parte orders* passed by Ld. CIT

6. We have heard the counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A) had categorically mentioned in its order that several opportunity of hearing were offered to the assessee by serving notices, but

neither any compliance nor any adjournment petition was filed by the assessee, which shows that the assessee had no interest to pursue or prosecute the appeal. Whereas on the contrary, Ld. AR submitted that assessee was very much interest to pursue or prosecute the appeal. It was submitted that assessee was suffering from illness and therefore could not appear before Ld. CIT(A) and hence in the absence of the assessee or his representative, the Ld. CIT(A) decided the appeal *ex-parte*.

After hearing the arguments of both the counsels at length and perusal of record, we find that assessee had not appeared before Ld. CIT(A) even inspite of service of notices, without any justification. Whereas it was the bounded duty of the assessee or his counsel to appear before Ld. CIT on the date fixed. The assessee has not acted with due diligence. Nevertheless the principles of natural justice demands that the lis between the parties should be decided on merits after providing due opportunity of hearing to both the parties. In our view, in the present case adequate opportunity of hearing to the assessee was provided by the Ld. CIT (A).

Be that as it may, considering the facts and circumstances of the present case, we are of the considered view that the ends of justice would be met only when we provide another opportunity of hearing to the assessee for contesting the appeal on merits. In our view, if the assessee is allowed to represent his case before Ld. CIT(A) then, no prejudice would be caused to the interest of revenue as legitimate taxes due on the assessee's correct income will be adjudicated. Whereas, if the contrary view is taken then in that eventuality the assessee may be put to great hardship and difficulty. Therefore, keeping in view the above discussion, we set

aside the ex-parte order passed by Ld. CIT(A) and restore the matter back to the file of Ld. CIT(A) for fresh decision and assessee is directed to appear before Ld. CIT(A) on **19.04.18**.

It is needless here to mention that the assessee shall not take adjournment without a valid reason and shall extend all necessary cooperation to the Ld. CIT(A) in expeditious disposal of this matter. Before parting, we may make it clear that our decision to restore the matter back to the file of Ld CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Ld. CIT independently in accordance with law.

Registry is directed to serve the copy of this order to both the parties at the earliest.

7. In the net result, the appeal filed by the assessee **is allowed for statistical purposes** and in view of our above decision, the stay application filed by the assessee stands **dismissed as infructuous**.

Order pronounced in the open court on 9th March 2018 immediately after the completion of hearing.

Sd/-
(G. S. Pannu)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 09.03.2018
Sr.PS Dhananjay

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**