

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

S.P. No.4/Bang/2019 (in ITA No.3120/Bang/2018) & ITA No. 3120/Bang/2018 Assessment Year : 2014-15

M/s. Sahyaadri Health Tourism Pvt. Ltd., Nos. 157 & 158, 10 th A Main, First Block, Jayanagar, Bangalore – 560 011. Karnataka PAN: AAMCS5709D	Vs.	The DCIT, Circle – 1, Shivamogga.
APPELLANT		RESPONDENT
Assessee by	:	Shri G.S. Prashanth, CA
Revenue by	:	Shri Vikas K. Suryawanshi, Addl. CIT (DR)
Date of hearing	:	18.01.2019
Date of Pronouncement	:	18.01.2019

ORDER

Per Shri A.K. Garodia, Accountant Member;

This stay petition is filed by the assessee seeking stay of disputed outstanding demand of Rs. 33,34,601/-.

- In course of hearing of this stay petition, it was submitted by Id. AR of assessee that this appeal is filed by the assessee against the ex-parte order passed by the CIT (A) in which the Id. CIT (A) has not decided the issue on merit but he simply dismissed the appeal of the assessee in limine by following the Tribunal order rendered in the case of Multiplan (India) Ltd., 38 ITD 320 (Del). He submitted that this order of CIT (A) is not sustainable and therefore, the appeal itself may be decided and the matter may be restored back to the file of CIT (A) for fresh decision after providing reasonable opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A) and he submitted that the order of CIT(A) should be confirmed and even if the appeal is not decided, no stay should be granted.
- We have considered the rival submissions. We find that it is noted by CIT (A) in para 3 of his order that the case was posted for hearing on 21.02.2018 and the assessee's AR appeared and he was asked to file details of transactions and the case was reposted for hearing on

04.04.2018. On this date, there was no compliance. He further noted that the case was refixed for hearing on 03.10.2018. On this date, there was no compliance from the assessee or his AR. It is seen that out of several dates of hearing fixed by CIT (A), there was no effective compliance from the assessee's side. Firstly on 04.04.2018 but thereafter, the matter was refixed for hearing on 12.09.2018 and on this date, the AR of assessee appeared before CIT (A) and sought adjournment. Hence, this non-compliance is not material. Thereafter, on 03.10.2018, there is one more non-compliance. In our considered opinion even if the Id. CIT (A) considered it proper to decide the appeal ex-parte qua the assessee, he should have decided the appeal on merit instead of dismissing the appeal in limine and hence, we set aside the order of CIT (A) and restore back the matter to his file for fresh decision after providing reasonable opportunity of being heard to assessee. Since we have decided the appeal itself, the stay petition dos not survive and therefore, dismissed.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay petition of the assessee is dismissed.

Order pronounced in the open court on the date of hearing on conclusion of the hearing.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 18th January, 2019.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.