

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
श्रीमती दिवा सिंह, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.476/SRT/2018
निर्धारण वर्ष/Assessment Year : 2013-14

AINA Construction, 37, Nirmala Nagar Society, Sarhana Jakanaka, Varachha Road, Surat.	Vs.	Deputy Commissioner of Income Tax, Circle-2(3), Surat.
[PAN: AAQFA 5644 J]		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Ashwin Parekh - CA
राजस्व की ओर से /Revenue by	Shri Srinivas T.Bidari - CIT-DR

सुनवाई की तारीख/ Date of hearing:	08.01.2019
उद्घोषणा की तारीख/Pronouncement on	11.01.2019

आदेश /ORDER

PER DIVA SINGH, JM:

1. The present appeal has been filed by the assessee assailing the correctness of the order dated 25.05.2018 of CIT(A), Surat-1 pertaining to 2013-14 assessment year on the following grounds :

1. *The learned CIT(A) has grievously erred in law and on facts in confirming the addition of Rs. 2,75,10,000/- without appreciating the facts of no admission of Undisclosed Income, sale of 56 units in earlier years, statement of Row House owners admitting no payment of "On-money" and no evidence of "On-money" found on the date of survey. The addition of Rs. 2,75,10,000/- should therefore, be deleted.*
2. *The learned CIT(A) has grievously erred in law and on facts in confirming the addition of Rs. 6,68,80,000/- for the papers belonging to Hirenghai Solanki without appreciating the facts recorded in Q. No. 14 of statement recorded on 17.12.2012, facts of no bunglow No. 96 to 102 in the project of 64 Row Houses of appellant and non-Verification of Hirenghai Solanki. The addition of Rs. 6,68,80,000/- should therefore, be deleted.*
3. *The learned CIT(A) has grievously erred in law and on facts in confirming the addition of Rs. 12,18,875/- for page No. 18 of Annexure B-l-1 disregarding the facts of allocation of cost of compound wall between residents of Gangotri Project and adjoining project of Shree Residency whereby their mutual dealing were reduced to*

writing and having no implications on the appellant. The addition of Rs. 12,18,875/- should therefore, be deleted.

4. *The learned CIT(A) has grievously erred in law and on facts in , passing the Order u/s. 250 of the Act without allowing the next date of hearing in term of letter dtd. 25.05.2018 filed by assessee. The Order of should therefore, be set aside."*

2. The Id.AR inviting attention to Ground No.4 submitted that the appeal of the assessee has been dismissed without passing an order on merit. Referring to the record it was submitted that the assessee had been seeking time in order to place necessary evidence on record for which purposes the CIT(A) had granted time. The last notice dated 17.05.2018 fixing the date of hearing 24.05.2018 it was submitted was received by the assessee on 25.05.2018 and on account of this fact the assessee could not appear before the CIT(A) on 24.05.2018 and put a personal appearance along with an application on 25.05.2018. Referring to page 101 of the paper book it was submitted that the assessee had stated *The hearing of above case has been fixed on 24.05.2018. However, the notice is received today. Kindly, therefore, allow a short adjournment and refix a new date and oblige.* In the circumstances it was his prayer that the matter may be remanded and remand may be made to the assessing officer as in the facts of the present case the factum of ownership of this specific land is disputed by the assessee for which purposes the Assessing Officer will need to carry out enquiry with the land Revenue Authorities. It was his submission that the assessee has taken this position even before the Assessing Officer and all necessary facts and evidences in support of its claim have been made available to the Assessing Officer.

3. The Id.CIT-DR inviting attention to para 5.1.2 of the impugned order submitted that the CIT(A) has verified that the show cause notice was delivered to the assessee on 21.05.2018 on account of which fact he has rejected the adjournment letter dated 25.05.2018. On a reading of the impugned order dated 25.05.2018 we find that the CIT(A) having noted the opportunities given ultimately in para 5.1.3 to

5.1.5 relying upon B.N.Bhattacharjee and Another (118 ITR 461) Estate of Late Tukojirao Holkar Vs. CWT (223 ITR 480) (MP)The Hon'ble Bombay High Court in the case of M/s.Chemipol V/s. Union of India in Excise Appeal No.62 of 2009 Late Tukojirao Holkar (MP), 223 ITR 480. and CIT Vs. Multiplan India (P) Ltd. (38 ITD 320) (Del)etc., dismissed the appeal holding as under :

"5.1.5. Respectfully, following these judicial pronouncements (supra), the appeal filed by the appellant is treated as dismissed for non-prosecution. On merit also, the appellant has failed to furnish any corroborative evidence of his claim. In view of the above, on merits also appeal deserves to be dismissed. Hence, appeal is dismissed for non-prosecution as well as on merits too."

4. The parties have been heard. In the light of these facts and circumstances and the submissions of the parties before the Bench without getting into the debate whether the notice for the last date of hearing i.e. 24.05.2018 was received on time by the assessee or not the fact remains that the assessee remained unrepresented before the CIT(A) as per reasons set out in the application moved (copy attached) at Page No.101 of the paper book requested for a new date. We note that that ld.CIT(A) in the facts of the present case admittedly dismissed the appeal for non-prosecution instead of passing an order on merit. The said procedure undisputedly is in violation of subsection (6) of section 250 of the Income Tax Act which mandates that the CITA) while disposing the appeal shall not only make out an order in writing but shall also state the points for determination, the decision thereon and the reasons for the decision. The said statutory requirement is found to be missing. Accordingly to set right the said statutory deficit we set-aside the impugned order back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving a reasonable opportunity of being heard. While coming to the said conclusion which was communicate to the parties in the given court on the date of hearing itself we have taken note of the request of the ld.AR that the remand be directed to the assessing officer, we find however in the absence of any justification available

on record wherein the impugned order proceeds entirely on dismissal of the assessee's appeal on non-prosecution we find no reason available on record to direct remand to the AO. Taking note of the request made by way of abundant caution we direct that the CIT(A) while adjudicating the issue exercising the powers vested in the said authority may either cause necessary verification to be done by the AO if need be or in case the necessary evidences are available on record carry out the enquiry, etc., at his own instance on the disputed issue. Said order was pronounced in the open court at time of hearing itself.

5. In the result, appeal of the assessee is allowed for statistical purpose.

6. The order pronounced in the open court on 11th January 2019.

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 11th January, 2019/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Sd/-

(श्रीमती दिवा सिंह /DIVA SINGH)

(न्यायिकसदस्यतथा/JUDICIAL MEMBER)

/ / TRUE COPY / /

Assistant Registrar, Surat