

IN THE INCOME-TAX APPELLATE TRIBUNAL “G” BENCH MUMBAI

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA No. 966/Mum/2018 (Assessment Year 2011-12)

ITA No. 967/Mum/2018 (Assessment Year 2012-13)

ITA No. 968/Mum/2018 (Assessment Year 2013-14)

ITA No. 969/Mum/2018 (Assessment Year 2014-15)

Shri Shrikant Agarwal D-702, Lakschandi Apartment, GoKuldham, Goregaon (East), Mumbai-400063. PAN: AABPA0591P	Vs.	DCIT-6(3) Aayakar Bhavan, M.K. Road, Mumbai-400020.
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Appellant

Respondent

Appellant by : Shri Rakesh Joshi (AR)

Respondent by : Shri B.B. Rajendra Prasad (CIT-DR)

Date of Hearing : 14.03.2019

Date of Pronouncement : 20.03.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These four appeals by assessee under section 253 of Income-tax Act ('Act') are directed against the order of Id. Commissioner of Income-tax (Appeals)-54, hereinafter referred as Id. CIT (A), Mumbai, all dated 27.12.2017 for Assessment Year 2011-12 to 2014-15. The assessee has raised the common grounds in all appeals for all the Assessment Years except variation of figures of amount. For appreciation of facts we are referring the facts and grounds of appeal in ITA No. 966/Mum/2018 for AY 2010-11. The assessee has raised the following grounds of appeal:

The following grounds of Appeal are without prejudice to each other:-

1. On the facts and circumstances of the case and in Law, the Learned CIT(A) has erred in passing ex-parte order without granting sufficient opportunity of being heard.
 2. On the facts and circumstances of the case and in Law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs. 3,00,00,000/- u/s 69C of the Income Tax Act, 1961 as alleged Unaccounted investment, without considering the facts and circumstances of the case.
2. Brief facts of the case are that the assessee as search action 132 was conducted on 04/04/2014 on M/s Avighna Group covering its head office, site officer and residence and office premises of its key persons. The person and the individual who had paid 'on money' for booking flat to M/s Nish Developer Pvt Ltd were also search. During the search one of the key employees Praveen Mishra of M/s Nish Developer Pvt Ltd was covered. From the residence of Praveen Mishra, a pen drive and some rough sheet were found and seized. The assessee is one of the purchasers of a flat in "One Avighna Park". The data from the pen drive contained the details of cash paid by the assessee. Notice under section 153A was issued to the assessee on 04.02.2011. In response to the notice under section 153A, the assessee filed his return of income on 153A declaring total income of Rs.74,95,620/-. The assessee filed original return of income on 27.09.2011 declaring income of Rs.74,95,620/-. The assessment was completed under section 143(3) read with section 153A on 29/12/2016. The assessing officer while passing the assessment order

made addition of Rs. 3.00 Crore under section 69C on account of cash paid to M/s Nish Developer Pvt Ltd. On appeal before Id CIT(A) the action of the assessing officer was upheld. The Id CIT(A) upheld that action of the assessing officer in ex-party order dated 27.01.2017. The Id CIT(A) dismissed the appeal of the assessee for other years i.e for AY 2012-13 to 2014-15 with similar order on 27.01.2017. Thus, further aggrieved by the order of the Id CIT(A) the assessee has filed present appeal before this Tribunal

3. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. Ground No.1 relates to passing the ex-party order without giving the opportunity to the assessee. The Id AR for the assessee submits that before Id CIT(A) the hearing of the appeal was fixed on 27.11.2017, the AR for the assessee Mr. Pradeep Choudhary CA sent adjournment application as he was not well and the appeal was accordingly re-fixed for hearing on 18.12.2017. On 18.12.2017 the AR for the assessee could not attend the hearing as he was not well since 27.11.2017. The Id. AR for the assessee further submits that Mr. Pradeep Kumar Choudhary was undergoing various medical tests on 18.12.2017 and was diagnosed with Cancer. Mr. Pradeep Kumar Choudhary CA was hospitalized on 18.12.2017 and was discharged from hospital only on 24/12/2017 and was advised complete

rest. The Id. AR for the assessee filed copy of Medical prescription and report of Medical test dated 18.12.2017 and the discharge slip of P.D Hinduja National & Medical Research Centre dated 24.12.2017 of Pradeep Kumar Choudhary. The Id. AR further submits that there was sufficient cause for not attending the hearing on 18.12.2017 as the assessee has duly appointed his representative who could not date of hearing the date due to bonafide reasons. The assessee has good case on merit and is likely to succeed in case his appeal is heard and decides on merit.

4. On the other hand the Id. DR for the revenue submits that the assessee was given sufficient opportunity of hearing. The assessee was given three effective hearing, however the assessee failed to substantiate his contentions raised in the appeal before Id CIT(A). The Id CIT(A) decided the appeal on the basis of material available on record.
5. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. There is no dispute that the assessee filed appeal before Id CIT(A) on 27.01.2017. The appeal was fixed for hearing for the first time on 02.11.2017. On 02.11.2017 the assessee sought the adjournment on the ground that his representative was out of State and the appeal was fixed/ adjourn for 27.11.2017. On 27.11.2017 again the adjournment was sought that the authorized representative of the assessee is not well and advised rest by Doctors.

The appeal was adjourned for 18.12.2017. None appeared on 18.12.2017, therefore, the Id CIT(A) decided to passed the order on the basis of material available on record. Perusal of the impugned order shows that Id CIT(A) recorded the presence of Sh. Pradeep Kumar Choudhary CA on behalf of the assessee. There is not dispute about the adjournment of appeal before Id. CIT(A) on 27.11.2017. The Id CIT(A) adjourn for 18.12.2017, on 18.12.2017 none appeared before the Id CIT(A) nor any application for seeking further date was filed. Therefore, the Id. CIT (A) proceeded to decide the appeal on the basis of material available on record. The Id. AR for the assessee vehemently argued that Sh. Pradeep Kumar Choudhary CA/ authorized representatives was hospitalized on 18/12/2017 and was discharged on 24.12.2017. In support of his submissions the Id. AR has furnished the documentary evidences in the form of Medical prescription and discharged slip of P.D Hinduja National & Medical Research Centre dated 24.12.2017. Considering the facts that the AR for the assessee could not appeared due to his illness as he was under medical treatment and was discharged only on 24.12.2017. The appeal of the assessee was decided by Id CIT(A) in ex-party order dated 27.12.2017. In our view, considering the peculiarity of facts and circumstance of the case, when the assessee been able to show the sufficient cause for non-appearance before Id CIT(A), and the appeal of the assessee was decided without affording sufficient

opportunity to the assessee. Thus, the assessee is entitled for hearing of the appeal on merit. Therefore, we allow the ground No. 1 of the appeal and restore the appeal to the file of Id CIT(A) to decided the appeal in accordance with law. Needless to order that the Id CIT(A) shall grant sufficient opportunity to the assessee. The assessee is also directed to provide all relevant documentary evidences and information to the Id CIT(A). In the result ground No.1 of the appeal is allowed.

6. As we have allowed ground No.1 and restore the appeal to the file of Id CIT(A) therefore, the discussions on the other ground of appeal have become academic.
7. In the result the appeal of the assessee is allowed for statistical purpose.

ITA No. 967 to 969/Mum/2018 for AY 2012-13 to 2014-15

8. The assessee has raised identical grounds of appeal as raised in appeal for AY 2011-12, except various of figure of additions, therefore, considering our decision for AY 2011-12 on identical grounds, these appeals are also restored to the file of Id CIT(A) with similar direction.
9. In the result, all the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 20/03/2019.

Sd/-
N.K. PRADHAN,
ACCOUNTANT MEMBER
Mumbai, Date: 20.03.2019
SK

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**