

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos.2523 to 2525/Bang/2018
Assessment Years :2005-06, 2007-08 & 2008-09

M/s. Soundarya Promoters & Developers, No. 190, Soundarya Damini, 4 th Phase, Dollar Colony, JP Nagar, Bangalore – 560 016. PAN: ABFPS1679F	Vs.	The Assistant Commissioner of Income Tax, Central Circle – 2 (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Ms. Jyothi Anumolu, Advocate
Revenue by	:	Shri Tshering Ongda, JCIT (DR)
Date of hearing	:	15.05.2019
Date of Pronouncement	:	31.05.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

All these three appeals are filed by the assessee and these are directed against three separate orders of Id. CIT (A)-11, Bangalore all dated 14.05.2018 for Assessment Years 2005-06, 2007-08 and 2008-09. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2005-06 in ITA No. 2523/Bang/2018 are as under.

“1. On the facts and circumstances of the case, the order of the CIT(A) dated 14/05/2018, for the Assessment Year 2005-06 is not maintainable in law.

2. On the facts and circumstances of the case, the learned CIT(A) ought to have appreciated that the Assessing Authority made additions of Rs. 15,75,685/- is not correct, the CIT(A) without appreciating the fact of the appellant and confirmed the additions made by the assessing authority is against the law. Hence order of CIT(A) is not maintainable in Law.

3. On the facts and circumstances of the case, the learned CIT(A) ought to have appreciated that the exparte assessment order passed by the assessing authority is not correct and the same is considered by

CIT(A) is against the principle of natural justice.

6. Without prejudice, the CIT(A) confirmed the Assessing Authority levied tax and the interest levied U/s 234B & 234C by the Assessing Authorities is excessive, arbitrary and ought to be deleted.

7. For such other grounds that may be urged at the time of hearing and it is prays that kindly may allow the appeal in the interest of justice and equity.”

3. The grounds raised by the assessee for Assessment Year 2007-08 in ITA No. 2524/Bang/2018 are as under.

“1. On the facts and circumstances of the case, the order of the CIT(A) dated 14/05/2018, for the Assessment Year 2007-08 is not maintainable in law.

2. On the facts and circumstances of the case, the learned CIT(A) ought to have appreciated that the Assessing Authority made additions of Rs. 2,72,977/- is not correct, the CIT(A) without appreciating the fact of the appellant and confirmed the additions made by the assessing authority is against the law. Hence order of CIT(A) is not maintainable in Law.

3. On the facts and circumstances of the case, the learned CIT(A) ought to have appreciated that the exparte assessment order passed by the assessing authority is not correct and the same is considered by CIT(A) is against the principle of natural justice.

6. Without prejudice, the CIT(A) confirmed the Assessing Authority levied tax and the interest levied U/s 234B & 234C by the Assessing Authorities is excessive, arbitrary and ought to be deleted.

7. For such other grounds that may be urged at the time of hearing and it is prays that kindly may allow the appeal in the interest of justice and equity.”

4. The grounds raised by the assessee for Assessment Year 2008-09 in ITA No. 2525/Bang/2018 are as under.

“1. On the facts and circumstances of the case, the order of the CIT(A) dated 14/05/2018, for the Assessment Year 2006-07 is not maintainable in law.

2. On the facts and circumstances of the case, the learned CIT(A) ought to have appreciated that the Assessing Authority made additions of Rs. 1,72,798/- is not correct, the CIT(A) without appreciating the fact of the appellant and confirmed the additions made by the assessing authority is against the law. Hence order of CIT(A) is not maintainable in Law.

3. On the facts and circumstances of the case, the learned CIT(A)

ought to have appreciated that the ex parte assessment order passed by the assessing authority is not correct and the same is considered by CIT(A) is against the principle of natural justice.

6. Without prejudice, the CIT(A) confirmed the Assessing Authority levied tax and the interest levied U/s 234B & 234C by the Assessing Authorities is excessive, arbitrary and ought to be deleted.

7. For such other grounds that may be urged at the time of hearing and it is prays that kindly may allow the appeal in the interest of justice and equity.”

5. At the very outset, it was submitted by Id. AR of assessee that these appeals are filed by the assessee belatedly and the delay is of 51 days. She also submitted that application for condonation of delay along with affidavit is submitted in which the reason for delay has been explained. She pointed out that it was stated by assessee in the affidavit that he was unable to file the appeals in time before the Tribunal because of ill health. She submitted that in the interest of justice, this delay should be condoned. The Id. DR of revenue submitted that delay should not be condoned but considering this fact that the delay is caused because of illness of the assessee, I condone the delay in the interest of justice and these appeals are admitted.
6. Thereafter it was pointed out by Id. AR of assessee that all the orders of CIT (A) are ex-parte qua the assessee. She submitted that because of assessee's illness, he could neither appear himself before CIT (A) nor he could appoint an AR for compliance before the CIT (A). She submitted that in the interest of justice, the matter may be restored back to the file of CIT (A) for fresh decision after providing reasonable opportunity of being heard to the assessee. Thereafter she submitted that this is one of the basis of the addition made by the AO as per the assessment order that the assessee admitted at the time of search to offer the amount in dispute for taxation whereas the assessee has not declared the same in the return of income filed by the assessee. She submitted that the assessee has submitted an affidavit on this aspect also that this statement of AO in the assessment order is not correct that assessee has admitted additions. The Id. DR of revenue supported the orders of authorities below.

7. I have considered the rival submissions. I find that in the assessment orders, the AO has stated that in course of post search proceedings, the assessee has furnished statement showing the receipts and expenses from its "Soundarya Nest" projects and the details are noted by the AO on page no. 2 of the assessment order for each year. Thereafter the AO has stated on page no. 3 of the assessment order that the assessee has admitted at the time of search to offer these amounts for taxation without pointing out any particular statement of assessee in course of search proceedings as to when and how this admission was made by the assessee. Moreover, the addition cannot be made on the basis of admission alone if such admission is not corroborated by material on record. This is also seen that order of CIT (A) is ex-parte qua the assessee because of non-appearance of the assessee before CIT (A). Considering all these facts, I set aside these three orders of CIT (A) and restore back the matter to the file of CIT (A) for fresh decision after providing adequate opportunity of being heard to both sides. I also want to make it clear that assessee is at liberty to produce all evidences in support of this contention that the addition made by the AO is not justified and such material can be produced before the CIT (A) even if the same was not produced before the AO in course of assessment proceedings and in such a situation, the CIT (A) should obtain remand report from the AO. With these observations, I set aside the order of CIT(A) in all three years and restore the matter back to the file of CIT(A) for fresh decision after providing reasonable opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.
8. In the result, all the three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st May, 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.