

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE
**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.1246/Bang/2018
(Assessment Year: 2010-11)

M/s. Southern Hills Developers P. Ltd., 7 th Floor, Nitesh Timesquare, No.8, M.G. Road, Bangalore-560 001 PAN AACCN 3865H	Vs.	Dy. Commissioner of Income Tax, Circle 12(3), Bangalore.
(Appellant)		(Respondent)

Assessee By:	Shri Narendra Sharma, Advocate.
Revenue By:	Shri R.N. Siddappaji, Addl.CIT.

Date of Hearing :	03.07.2019.
Date of Pronouncement :	22.07.2019

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-6, Bangalore passed under Section 143(3) and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The learned CIT[A] is not justified in passing the order ex-party without affording sufficient opportunity to the appellant, under the facts and in the circumstances of the appellant's case.
3. Without prejudice to the above, the learned CIT[A] is not justified in sustaining the addition of a sum of Rs. 2,07,73,786/- as unexplained income under the facts and in the circumstances of the appellant's case.
4. The learned CIT[A] is not justified in sustaining the disallowance of a sum of Rs.4,02,24,590/- as finance charges-interest under the facts and in the circumstances of the appellant's case.
5. The learned CIT[A] is not justified in sustaining the addition of a sum of Rs.1,55,40,590/- as allocation of expenses under the facts and in the circumstances of the appellant's case.
6. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.
7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. The brief facts of the case are that the assessee is engaged in engineering contracts and real estate development and filed the Return of Income electronically for the Assessment Year 2010-11 on 7.09.2010 with total income NIL. Subsequently, filed Revised Return with loss of Rs.3,54,81,014 and the Return of Income was processed under Section 143(1) and Notice under Section 143(2) and 142(1) were issued. The Assessing Officer found irregularities in the Revised Return filed. On verification made addition of unexplained income from projects and also disallowed financial charges, other expenses and assessed the total income of Rs.4,10,57,956 and passed the order under Section 143(3) Dt.26.3.2013. Aggrieved by the order of A.O., the assessee filed an appeal with the CIT(Appeals). In the appellate proceedings, the learned CIT(Appeals) has issued notice of hearing to the assessee on the various dates referred at page 2 of the CIT(Appeals) order and there was no compliance, CIT(Appeals) came to a conclusion that the assessee is not interested in prosecuting the appeals and partly allowed the appeal. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned AR submitted that the CIT(A) has erred in confirming the action of Assessing Officer and the assessee could not attend the case for various reasons and further there is no adjudication of case on merits and prayed for one more opportunity of hearing be provided before the appellate authority. Contra, the learned DR objected to the submissions of the learned AR as the assessee was provided sufficient opportunities for hearing before the appellate authority and referred to the CIT(A) order dated 27/02/2018 and prayed that the assessee's appeal be dismissed.

5. We heard rival submissions and perused the material on record. The learned AR submitted that the assessee could not appear for hearing due to various reasons. Whereas the learned DR has vehemently objected mentioning that the assessee was provided with sufficient opportunities. We find from the order of CIT (Appeals) that the assessee was provided sufficient opportunities of hearing though notice issued by the appellate authority on 18.11.2015, 20.5.2016, 13.7.2016, 9.12.2016, 2.2.2017 and final opportunity on 12.1.2018.

6. We found strength in the submissions of the learned DR. The CIT(A) has granted sufficient opportunities. When a query was raised to the learned AR being the Reasonable cause and Reasons for non-appearance, the explanations of learned AR are not satisfactory and are not supported with any evidence. We, considering the principles of natural justice, are inclined to restore the entire disputed issues to the file of the CIT(A) but considering the facts on record with respect to non-appearance of the assessee or learned AR in spite of issuing of notices on various dates of hearing in appellate proceedings and the assessee chose not to appear, which cannot be overlooked. Therefore, we are of the substantive opinion that the assessee should be provided an opportunity of hearing but with payment of cost of Rs.5,000/- to the Income-tax Department within a period of one month from the date of receipt of this order. Subject to the payment of above cost, we restore the entire disputed issue to the file of the CIT(A) to consider the matter afresh and adjudicate on merits and pass a speaking order. Further, the assessee shall submit proof of payment of cost challan copy with Tribunal and appellate authority. It is nevertheless to mention that the CIT(A) should provide adequate opportunity of hearing to the assessee to file evidences and documents in support of case and

assessee shall also cooperate in submitting the information as expeditiously for early disposal of the appeal and we order accordingly.

7. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 22nd July, 2019.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 22.07.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore

1.	Draft dictated on	03.07.2019
2.	Draft placed before author	12.07.2019
3	Draft proposed & placed before the second Member	
4	Draft discussed/approved by second Member	
5	Approved Draft comes to the Sr.P.S./PS	12.07.2019
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8	Date on which file goes to the Head Clerk	
9	Date of Dispatch of order	