

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos. 600 to 604/Bang/2019
Assessment years : 2010-11 to 2014-15

M/s. Rasasri Developers Pvt. Ltd., 3 rd Floor, Rasasri Chambers, #18, Jaladashini Layout, New BEL Road, Bengaluru – 560 054. PAN : AAACR 6574 P	Vs.	Assistant Commissioner of Income Tax, Central Circle – 1[2], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Harinder Kumar, CIT

Date of hearing	:	17.07.2019
Date of Pronouncement	:	23.07.2019

ORDER

Per Jason P. Boaz, Accountant Member:

These are five appeals by the assessee directed against the separate ex-parte orders of CIT(A)-11, Bengaluru, all dated 28.02.2019 for Assessment Years 2010-11 to 2014-15.

2. Briefly stated, the facts relevant for disposal of these appeals are as under:-

2.1 The assessee is a company engaged in the business of layout development and real estate. A search action under section 132 of the Income Tax Act, 1961 (in short ‘the Act’) was carried out at the premises of the assessee company on

01.10.2013 and subsequent thereto, assessment proceedings under section 153A of the Act were taken up for Assessment Years 2010-11 to 2013-14. Along with these assessment proceedings under section 153A of the Act, regular assessment proceedings were also taken up for Assessment Year 2014-15. The assessments were concluded under section 153A r.w.s. 143(3) of the Act vide orders dated 28.03.2016 for Assessment Years 2010-11 to 2013-14. For Assessment Year 2014-15, the order of assessment was concluded under section 143(3) r.w.s. 153D of the Act vide order dated 28.03.2016.

2.2 Aggrieved by the orders of assessment all dated 28.03.2016 for Assessment Years 2010-11 to 2014-15, the assessee preferred appeals before the CIT(A)-11, Bangalore. These appeals were posted for hearing by the CIT(A) and after recording that the assessee had not complied to the hearing notices issued, the CIT(A) dismissed the appeals ex-parte vide the impugned orders dated 28.02.2019 without hearing the assessee in the matter.

3. The assessee, being aggrieved by the ex-parte orders of CIT(A)-11, Bangalore dated 28.02.2019 for Assessment Years 2010-11 to 2014-15, has filed these appeals before the Tribunal, wherein it has challenged the impugned orders raising various grounds on legal grounds as well as on the additions / disallowances made; which are extracted hereunder:-

3.1 Assessment Year 2010-11

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 disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.

3. The order of assessment passed u/s 153A rws 143[3] of the Act is bad in law and void-ab-initio in as much there was no valid search conducted in the premises of the appellant and consequently, the provisions of section 153A of the Act, have no application and therefore, the impugned order passed deserves to be cancelled.

3.1 Without prejudice to the above, there is no justification to issue the warrant to search the premises of the appellant as the conditions specified in terms of Sec. 132[1] of the Act did not exist and therefore the search action is illegal and consequently the impugned assessment order founded thereon deserves to be cancelled.

4. The learned CIT[A] is not justified in upholding the addition of Rs. 2,53,000/- made as unexplained expenditure u/s 69C of the Act under the facts and in the circumstances of the appellant's case.

5. 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-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. 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.

3.2 Assessment Year 2011-12

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 disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.

3. The order of assessment passed u/s 153A rws 143[3] of the Act is bad in law and void-ab-initio in as much there was no valid search conducted in the premises of the appellant and consequently, the provisions of section 153A of the Act, have no application and therefore, the impugned order passed deserves to be cancelled.

3.1 Without prejudice to the above, there is no justification to issue the warrant to search the premises of the appellant as the conditions specified in terms of Sec. 132[1] of the Act did not exist and therefore the search action is illegal and consequently the impugned assessment order founded thereon deserves to be cancelled.

4. The learned CIT[A] is not justified in upholding the addition of Rs. 1,04,75,511/- made as unexplained expenditure u/s 69C of the Act under the facts and in the circumstances of the appellant's case.

5. 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-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. 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.

3.3 Assessment Year 2012-13

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 disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.

3. The order of assessment passed u/s 153A rws 143[3] of the Act is bad in law and void-ab-initio in as much there was no valid search conducted in the premises of the appellant and consequently, the provisions of section 153A of the Act, have no application and therefore, the impugned order passed deserves to be cancelled.

3.1 Without prejudice to the above, there is no justification to issue the warrant to search the premises of the appellant as the conditions specified in terms of Sec. 132[1] of the Act did not exist and therefore the search action is illegal and consequently the impugned assessment order founded thereon deserves to be cancelled.

4. The learned CIT[A] is not justified in upholding that the addition of Rs. 4,50,00,000/- as income from sale of lands during the year under appeal under the facts and circumstances of the appellant's case.

4.1 Without prejudice to the above, the learned CIT[A] ought to have allowed the costs of purchase of lands as expenditure from the sum Rs. 4,50,00,000/- taxed as income on the sale of lands during the year under appeal under the facts and circumstances of the appellant's case.

5. The learned CIT[A] is not justified in upholding the addition of Rs. 36,57,900/- made as unexplained expenditure u/s 69C of the Act 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-C 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.

3.4 Assessment Year 2013-14

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 disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.

3. The order of assessment passed u/s 153A rws 143[3] of the Act is bad in law and void-ab-initio in as much there was no valid search conducted in the premises of the appellant and consequently, the provisions of section 153A of the Act, have no application and therefore, the impugned order passed deserves to be cancelled.

3.1 Without prejudice to the above, there is no justification to issue the warrant to search the premises of the appellant as the conditions specified in terms of Sec. 132[1] of the Act did not exist and therefore the search action is illegal and consequently the impugned assessment order founded thereon deserves to be cancelled.

4. The learned CIT[A] is not justified in upholding the addition of Rs. 67,34,300/- made as unexplained expenditure u/s 69C of the Act under the facts and in the circumstances of the appellant's case.

5. 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-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. 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.

3.5 Assessment Year 2014-15

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 disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case and hence, the impugned order passed requires to be cancelled.

3. The order of assessment passed u/s 153A rws 143[3] of the Act is bad in law and void-ab-initio in as much there was no valid search conducted in the premises of the appellant and consequently, the provisions of section 153A of the Act, have no application and therefore, the impugned order passed deserves to be cancelled.

3.1 Without prejudice to the above, there is no justification to issue the warrant to search the premises of the appellant as the conditions specified in terms of Sec. 132[1] of the Act did not exist and therefore the search action is illegal and consequently the impugned assessment order founded thereon deserves to be cancelled.

4. The learned CIT[A] is not justified in upholding the disallowance made towards bad debts claimed of Rs. 50,07,23,378/- under the facts and circumstances of the appellant's case.

4.1 Without prejudice to the above, the learned CIT[A] ought to have appreciated that the aforesaid claim was allowable as loss incidental to business and hence, the disallowance made was unwarranted under the facts and circumstances of the appellant's case.

5. The learned CIT[A] is not justified in upholding the addition of Rs. 9,60,248/- as unexplained expenditure u/s 69C of the Act 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-C 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.

4. Ground No.2 (Assessment Years 2010-11 to 2014-15)

4.1 At the outset of hearing of these appeals, the learned AR of the assessee submitted that there was a common ground No.2 raised in all these five appeals (supra) contending that the CIT(A) had not afforded adequate and effective opportunity to the assessee, before deciding these appeals for Assessment Years 2010-11 to 2014-15 ex-parte. It was submitted that the assessee was requesting for adequate opportunity to place its submissions on merits before the CIT(A), who had decided the appeals ex-parte and without taking into consideration the submissions of the assessee. According to the learned AR, the assessee had appointed an authorised representative before the CIT(A) and the said AR had sought for adjournment of the appeals filed on certain earlier occasions. It was submitted that the assessee had not noticed the hearing notices dated 28.01.2019 and 07.02.2019 sent by email fixing the case for hearing on 07.02.2019 and 22.02.2019 since these hearing notices were delivered in the spam folder of the email and therefore were not sent to the AR to represent the case. In support of the above explanation, the assessee has also filed an affidavit dated 15.07.2019 of the Managing Director of the assessee company. The relevant portion of the Affidavit is extracted hereunder:-

1. That being aggrieved by the orders of assessment passed u/s. 153A rws 143[3] of the Act / 143[3] of the Act, dated 28/03/2016, for the aforesaid assessment years 2010 - 11 to 2014-15, we had instituted the appeals before the learned Commissioner of Income-tax [Appeals] - 11, Bangalore on 02/05/2016.

2. That the aforesaid appeals so filed were posted for hearing by the learned CIT[A]-11 on various dates viz., 30/06/2017, 09/11/2017, 24/04/2018, 16/05/2018 and 18/06/2018 for which we had entrusted the matter to our Authorized Representatives and it is learnt that they had sought time to produce details and file submissions and they had also filed adjournment letters for the hearing on these dates, which was allowed.

3. That, thereupon the office of the learned CIT[A]-11 had issued the hearing notices dated 28/01/2019 posting the case on 07/02/2019 and the notice dated 07/02/2019 posting the case for hearing on 22/02/2019, which notices were sent by e-mail to us and unfortunately, the same was delivered in the SPAM folder and hence, it was not immediately noticed by us so as to forward the same to our Authorised Representatives for further action.

4. That we received the separate appellate orders passed by the learned CIT[A]-11, Bengaluru all dated 28/02/2019, in which the appeals filed by us were decided ex-parte without the benefit of our submissions on the grievances raised in the appeal memorandum.

5. That, thereupon we undertook the examination of our records to ascertain the factual position with regard to the non-attendance of the hearings on 07/02/2019 and 22/02/2019 and it was discovered that the emails containing the hearing dates was received and delivered to the SPAM folder.

6. That, on account of the aforesaid reasons we failed to notice the notices of hearing that have been referred to by the learned CIT[A]-11 in the appellate order at the relevant point of time.

7. That, it is submitted that the failure to enter into appearance was not willful or deliberate and only on account of circumstances stated above and the same was due to sufficient cause.

8. That, it is submitted that the learned CIT[A]-11 has decided the appeals without the benefit of our submissions and hence, it is prayed that the order passed by the learned Commissioner of Income-tax [Appeals] may kindly be set-aside and for the advancement of substantial cause of Justice.

4.2 Per contra, the learned DR for Revenue supported the orders of the CIT(A), contending that the assessee was required to exercise due care and caution and the explanation that the emails were delivered to the spam folder does not constitute sufficient cause for the failure to appear before the CIT(A). According to the learned DR, the fact was that the notices were sent to the email provided by the assessee and therefore it cannot be said that the CIT(A) had not provided the assessee sufficient opportunity. The learned DR has also placed reliance on the decision of the Hon'ble Karnataka High Court in the case of Smt. Shobha Lakshman Vs. CIT(A) reported in (2019) 106 taxman.com 313 (Karnataka) in support of his plea that the impugned ex-parte orders passed by the CIT(A) were justified.

4.3 In rejoinder, the learned AR for the assessee referred to paras 5 and 6 of the aforesaid judgment of the Hon'ble Karnataka High Court (supra) and submitted that there was a clear finding recorded in the aforesaid judgment that the conduct of the assessee before the CIT(A) as well as the Tribunal was not bonafide. It was also pointed out that the Hon'ble High Court had recorded that there was no substantial question of law involved in the appeal and therefore the aforesaid judgment was distinguishable.

4.4.1 We have considered the rival contentions / submissions and perused the material on record. It is apparent from a perusal of the impugned orders that the CIT(A) has decided the appeals ex-parte since the assessee did not comply with and appear for the hearings fixed on 17.02.2019 and 22.02.2019. According to the explanation put forth by the assessee these hearing notices sent by email were delivered to the spam folder and therefore were not noticed immediately. We find that the ARs of the assessee have filed adjournment letters dated 24.04.2018, 16.05.2018 and 18.06.2018 before the CIT(A) requesting adjournments of earlier hearings; which have been granted. However, the

hearings on these dates are not reflected / shown in the impugned orders passed by the CIT(A). From the facts of the matter, as laid out above, it is apparent that the assessee has taken sufficient care in prosecuting its appeals before the CIT(A) and it is not a case where the assessee has acted in total disregard of the appellate proceedings. Thus, in our view, the assessee's claim for not noticing the hearings fixed on 07.02.2019 and 22.02.2019 is plausible and does not show any malafide on the part of the assessee. Moreover, when the assessee has been fastened with huge tax demands of Rs.19,01,440/- in Assessment Year 2010-11; Rs.97,26,518 for Assessment Year 2011-12; Rs.75,42,184/- for Assessment Year 2012-13 and Rs.26,36,11,584/- for Assessment Year 2014-15, it is unlikely that the assessee would have intentionally or deliberately acted in a manner that would prejudice its own case. In this view of the matter, we are of the considered opinion that the prayer of the learned AR for the assessee for fresh consideration of the appeals for Assessment Years 2010-11 to 2014-15 by the CIT(A) on merits should be allowed.

4.4.2 Before parting with the matter, we would have to address the decision of the Hon'ble Karnataka High Court in the case of Smt. Shobha Lakshman (supra), relied upon by the learned DR for Revenue. In the cited case (supra), the Hon'ble High Court noted that the assessee had not e-filed the appeal before the CIT(A) as required under Rule 45 of the Income Tax Rules, 1962. The CIT(A) had appraised the assessee of said lacuna in failure to e-file the appeal on the date of hearing and yet the assessee did not e-file the appeal, which was dismissed as invalid. On further appeal before the Tribunal, neither the assessee nor the authorized representative of the assessee appeared and therefore the Tribunal observed that the assessee was not interested in prosecuting the case; that was dismissed for non-prosecution. The Hon'ble High Court has observed that there was no bonfides on the part of the assessee in the said case, even if it is considered liberally and therefore confirmed the order of the Tribunal on the

ground that no substantial question of law would arise. The peculiar facts and circumstances of the cited case (supra), particularly the lack of bonafides as observed by the Hon'ble High Court would have to be borne in mind and therefore, in our humble view, this judgment cited by the learned DR would be inapplicable to the facts of the case on hand before us.

4.4.3 In the light of the factual and legal matrix of the case, as discussed above, we set aside the impugned orders passed by the CIT(A) for Assessment Years 2010-11 to 2014-15, all dated 28.02.2019 and restore these appeals to the file of the CIT(A) for fresh consideration and adjudication. Needless to add, the CIT(A) shall afford the assessee adequate opportunities of being heard and to file details / submissions required; which shall be duly considered before adjudicating the issues in the grounds raised by the assessee for the five Assessment Years involved. The assessee is also directed to co-operate and comply with the notices for hearing, details / submissions called for in order to facilitate the speedy disposal of these five appeals. Consequently, ground No.2 of assessee's appeals for Assessment Years 2010-11 to 2014-15 are allowed.

4.4.4 In view of the above finding, setting aside the impugned orders of CIT(A) for Assessment Years 2010-11 to 2014-15, the other grounds raised by the assessee in the appeals before us are not required to be adjudicated.

5. In the result, the assessee's appeals for Assessment Years 2010-11 to 2014-15 are allowed for statistical purposes.

Order pronounced in the open court on this 23rd day of July, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 23rd July, 2019.

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Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.