

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.447/Bang/2018
Assessment year : 2014-15
S.P No.127/Ban/2019 (In ITA No.447/Bang/2018)
Assessment year : 2014-15

India Radio Ventures Pvt. Ltd., 3J, 3 <sup>rd</sup> Cross, 3 <sup>rd</sup> Block, 7C Main, Koramangala Industrial Layout, Bengaluru-560 034.  PAN – AAACI 7524 A.	Vs.	The Asst. Commissioner of Income- tax Circle-6(3)(1), Bellary.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal, Advocate
Respondent by	:	Shri Pradeep Kumar, CIT

Date of hearing	:	05.08.2019
Date of Pronouncement	:	07.08.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 22/1/2018 passed by the 1d CIT(A)-3, Bengaluru and it relates to asst. year 2014-15.

2. The assessee is aggrieved by the decision of 1d CIT(A) in confirming the application of provisions of sec. 50C of the Act in respect of transfer of lease hold rights.

3. The ld counsel appearing for the assessee submitted that the ld CIT(A) has passed an ex-parte order and hence there was no opportunity for the assessee to present its case before him. The ld AR submitted that the provisions of sec. 50C of the Act are held to be not applicable to “lease hold properties” by Hon’ble High Court of Bombay in the case of CIT Vs. M/s Green Filed Hotels and Estates Pvt. Ltd (ITA No.735/2014 dated 24/10/2016). The above said decision of Bombay High Court was followed by Mumbai Bench of Tribunal in the case of Vandana D Shetty Vs. ITO ITA No.6668/Mum/2100) dated 5/7/2018. She submitted that the lease hold properties are not akin to the properties held with absolute rights and in this regard she placed reliance on the decision rendered by Hon’ble Bombay High Court in the case of The Collector of Bombay Vs. Khatizabai Dharsi Somji Dossa (1962) 64 BOMLR 311.

4. The ld AR submitted that the ld CIT(A) has decided the issue by following the decision rendered by Mumbai Bench of ITAT in the case of Shavo Norgren Pvt. Ltd. 33 taxmann.com 91. However, the decision rendered by Hon’ble Bombay High Court in the case of Green Filed Hotels and Estate Pvt. Ltd, being the decision of higher hierarchy should be preferred over the decision rendered by Mumbai Bench of Tribunal in the case of Shavo Norgren Pvt. Ltd. (Supra). Accordingly the ld AR prayed that the order passed by ld CIT(A) may be reversed.

5. On the contrary, the ld DR submitted that the ld CIT(A) was constrained to pass order ex-parte, since the assessee did not appear before him despite giving opportunity to the assessee two times.

6. We have heard rival contentions and perused the record. Admittedly the ld CIT(A) has passed the order ex-parte, without presence of the assessee. We noticed about the ld CIT(A) followed the decision rendered by Mumbai Bench of Tribunal in the case of Shavo Norgren Pvt. Ltd (supra). However before us, the assessee is placing reliance on the decision rendered by Hon'ble High Court of Bombay in the case of M/s Green Filed Hotels and Estates Pvt. Ltd.(supra). Admittedly the decision rendered by Hon'ble Bombay High Court should be preferred over the decision rendered by the Tribunal. We have noticed that the assessee has not appeared before ld CIT(A) and hence the first appellate authority did not have the benefit of examining the arguments of the assessee.

7. Hence, we are of the view that all the issues agitated in this appeal are required to be set aside to the file of ld CIT(A) for adjudicating them afresh. Accordingly we set aside the order passed by ld CIT(A) and restore all the issues to his file with the directions to issue to examine them afresh by duly considering the various case laws relied upon by the assessee. After affording adequate opportunity of being heard, the ld CIT(A) may take appropriate decision in accordance with law.

8. Since we have disposed of appeal itself, the stay application shall become infructuous.

9. In the result, the appeal of the assessee is allowed for statistical purposes and the stay application is dismissed.

Order pronounced in the Open Court on **7th August, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 7<sup>th</sup> August, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.