

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

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

ITA No.2334/Bang/2018
Assessment Year : 2014-15

M/s. B. M. Habitat, No.22, Gokulam Road, Jayalakshmipuram, Mysuru – 570 012. PAN : AAHFB 4898 E	Vs.	Income-Tax Officer, Ward - 1(1)(2), Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. Vikas Suryavamshi, Addl. CIT

Date of hearing	:	08.07.2019
Date of Pronouncement	:	21.08.2019

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the ex-parte order of CIT(A) - Mysuru, Bangalore, dated 16.05.2018 for Assessment Year 2014-15.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee, a firm engaged in earning rental income from letting out of “B M Habitat Mall”, filed its return of income for Assessment Year 2014-15 on 28.11.2014 declaring a loss of Rs. (-)1,90,42,103/-. The case was taken up for scrutiny for this Assessment Year and the assessment was concluded under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’) vide order dated

30.12.2016 wherein the assessee's loss was determined at Rs.1,36,57,801/-, in view of disallowance of the assessee's claim of depreciation amounting to Rs.53,46,659/-.

2.2 Aggrieved by the order of assessment dated 30.12.2016 for Assessment Year 2014-15, the assessee preferred an appeal before the CIT(A) – Mysuru. The CIT dismissed the assessee's appeal ex-parte vide order dated 16.05.2018.

3. The assessee, being aggrieved by the order of the CIT(A)-Mysore dated 16.05.2018 for Assessment Year 2014-15 has filed this appeal before the Tribunal, wherein it has raised the following grounds:-

1. The Order of the learned Commissioner of Income-tax (Appeals), passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.
2. The Ld. Assessing Officer failed to appreciate that the depreciation claimed in the financials is on the WDV of the building and the entire portion of the Mall owned by the appellant and the same forms one integral block of assets and hence, once an asset enters into "block of assets" and depreciation has been granted on it, the claim of depreciation cannot be denied in subsequent years.
3. The Ld. AO failed to appreciate, that the building was used for the purpose of business and the Ld. AO's action of disallowing the depreciation is without any basis, contrary to the provisions of the scheme of the Act.
4. The Ld. Commissioner(Appeals) erred in the order in as much as the issue involved is identical to that of assessment year 2012-13 and the Ld. Commissioner vide order dated 28.02.2017 has deleted the addition made by the Ld. AO and thus erred in dismissing the appeal without appreciating the facts of the cases.
5. The Ld. Commissioner(Appeals) grossly erred in the order in law and facts in as much as by dismissing the appeal on ex-parte basis in respect of a depreciation on the opening WDV of the assets which was allowed in the earlier years.

6. Without prejudice to any other ground the Appellant is in possession of all the evidences and is willing to demonstrate how the relevant depreciation is eligible as an allowance under the scheme of the Act.
7. The Appellant craves leave to add to and / or to alter, amend, rescind, modify, the grounds herein above or produce further documents before or at the time of hearing of this Appeal. All the grounds raised herein above are mutually exclusive. The Appellant craves leave of this Hon'ble Bench to file a detailed paper book in support of its case at the time of hearing of the appeal.

3.2 In the 'statement of facts' filed before the Tribunal, the assessee has submitted as under:-

3. Proceedings at the office of the Ld. Commissioner:

- a. Aggrieved by the order made u/s 143(3) the Appellant preferred an appeal before the Ld. Commissioner (Appeals) u/s 246A of the Act on 28.01.2017.
- b. The Ld. Commissioner (Appeals) in his order dated 28.05.2018, without affording adequate opportunity to produce the evidences, sustained the depreciation disallowance for non production of any evidences.
- c. The issue is squarely covered by the Appellant's own case of AY 2012-13, wherein the Ld. Commissioner (Appeals) vide his order dated 28.02.2017 had deleted the disallowance. Thus, the WDV of the assets has become final and the depreciation on the entire block of building is automatically allowable. The learned AO made the addition by virtue of the disallowance in the earlier year which has since been deleted and hence, depreciation is allowable on the WDV available as per the books and order of the CIT (A) for the earlier year.
- d. **The Appellant was not able to appear before the Ld. Commissioner (Appeals) due to the following reasons:**
 - i. It was learnt that there was a notice Dt. 08.05.2018 from the office of the Ld. Commissioner(Appeals), fixing the hearing on 17.05.2018 and the above notice was received by security personnel at basement of the Appellant Mall on 11.05.2018 at around 3 PM. The entire housekeeping and maintenance work staff of the Mall was outsourced to one Contractor M/s Compass Retail & Mall Management Services LLP.
 - ii. All the housekeeping and maintenance staff of the Appellant Mall went on a strike and mass protest from 11.05.2018 to 14.05.2018 for non remittance of the Employee State Insurance (ESI) and Provident Fund (PF) by their Employer M/s Compass Retail & Mall Management Services LLP.

- iii. The Appellant Firm was requesting the Contractor to remit the ESI and PF, provide the challans proof, and only thereafter claim of ESI and PF for the period of 01.01.2017 to 31.12.2017 from the Appellant.
- iv. During the period of strike all housekeeping and maintenance staffs of the Mall were getting assembled at third floor of the mall in the same office room of the Appellant's office and were protesting, engaged in Dharana and were demanding the immediate release of PF and ESI to the contractor's account.
- v. The security personnel, who received the notice from the postal office in the basement floor of the Mall on 11.05.2018, handed over the same to office staff of the Mall situated at the third floor at the closing hours of the business.
- vi. The office staff kept all the correspondence received during the employee protest days in a box and was kept safely in the store room adjacent to the office room in order to ward off the documents and office belongings from any untoward incidents that may occur from the agitated employees.
- vii. After much of the deliberations of four days, the Management of the Appellant and Contractor and employees could resolve the issue and strike was revoked only on 15.05.2018 and it took weeks for the appellant mall to restore the business operations to normal and the Appellant Firm's management was busy in resolving business crisis which occurred for the first time in the history of eight years' of its operation.
- viii. The Appellant Firm's management was not aware of the very fact that there was a hearing notice fixing the case for hearing on 17.05.2018. That, apart from the above notice, the Appellant was not served with any other notice either physical or in the form of Email.
- ix. Hence, the Ld. Commissioner (Appeals) has passed the ex parte order and the same was received on 31.05.2018 through email and signed order was received on 05.06.2018 and only thereafter, Appellant's staff traced the notice referred in the order in the box kept in safe. The only reason for non appearance to the personal hearing was due to the fact that our business was totally sterilized by the strike of housekeeping and maintenance staffs during the intervening period of the notice and the failure to enter into appearance was not willful or deliberate and only on account of circumstances stated above.
- x. The Appellant was not aware of the basic fact that the appeal was posted for hearing and hence there was no representation for the appeal where disallowance of depreciation of Rs. 53,46,659/- was sustained for want of non production of evidences in an ex parte order.

3.3.1 We have considered the rival contentions and perused the material on record. We find from a perusal / appraisal of the impugned order of the CIT(A) that admittedly, the assessee was afforded only one opportunity of hearing before the CIT(A) on 16.05.2018 vide notice issued on 08.05.2018. Non-attendance by the assessee before the CIT(A) on 16.05.2018 for this single hearing resulted in CIT(A) dismissing the assessee's appeal ex-parte; without hearing the assessee or having the benefit of its submission on the issues raised in appeal.

3.3.2 According to the averments put forth by the assessee before us in the 'statement of facts' (supra), the issue of dispute in the appeal before the CIT(A) i.e., 'the disallowance of assessee's claim of Depreciation' has been allowed by the CIT(A) in the assessee's own case for Assessment Year 2010-11 vide order dated 28.02.2017 and therefore it was contended by the learned AR that the assessee has a good case on merits. Apart from this, we also are of the view that explanation put forth by the assessee, for its non-attendance on the only hearing afforded before CIT(A) on 16.,05.2018, is plausible and in our view constitutes reasonable and sufficient cause for non-appearance by the assessee. Further, we also find that the appeal has been disposed off ex-parte without the benefit of hearing the assessee in the matter and considering the submissions / past history of the case / issues involved. The ultimate object of assessment is that the correct income of the assessee is brought to tax and therefore, in the facts and circumstances of the case, as discussed above, we are of the view that for the cause of substantial justice to be served, it is imperative that the impugned ex-parte order of the CIT(A) for Assessment Year 2014-15 to be set aside and do so and consequently restore the matter to the file of the CIT(A) for consideration and adjudication on merits of the grounds raised by the assessee in the appeal before the CIT(A). Needless to add, the CIT(A) shall afford the assessee adequate and reasonable opportunity of being heard and to file details /

submissions required which shall be duly considered by the CIT(A) before deciding the issues. We hold and direct accordingly.

4. In the result, the assessee's appeal for Assessment Year 2014-15 is allowed for statistical purposes.

Pronounced in the open court on 21st August, 2019.

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Sd/-
(JASON P. BOAZ)
Accountant Member

Bangalore.

Dated: 21st August, 2019.

/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.