

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 574/Bang/2019
Assessment Year : 2015-16

M/s. BUNS Hospital Pvt. Ltd., # 11, A Wing, 8 <sup>th</sup> Floor, Divyasree Building, O’Shaughnessy Road, Bangalore – 560 025. <b>PAN: AAECB6969L</b>	Vs.	The ACIT, Circle – 1 [1] [2], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Ujjwal Kumar, JCIT (DR)

Date of hearing	:	14.08.2019
Date of Pronouncement	:	28.08.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-1, Bangalore dated 05.12.2018 for Assessment Year 2015-16.

2. The grounds raised by the assessee are as under.

*“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, real, effective and meaningful opportunity to the appellant in as much as the appellant had received only one notice dated 30/11/2018 fixing the case for hearing on 05/12/2018 and owing to the extremely short time allowed, the appellant could not place the same in the hands of its AR to represent the case before the learned CIT[A] under the facts and in the circumstances of the appellant's case.*

*3. Without prejudice to the above, the learned CIT[A] ought to have decided the grounds raised by the appellant with regard to the addition*

*of Rs.2,59,39,293/- made on the ground that the same was un-explained Cash credits u/s.68 of the Act under the facts and in the circumstances of the appellant's case.*

*4. Without prejudice to the above, the learned CIT[A] ought to have decided the grounds raised by the appellant with regard to the addition made as alleged bogus expenditure of Rs.1,83,00,040/- under the facts and in the circumstances of the appellant's case.*

*5. The learned CIT[A] ought to have appreciated that the dismissal of the appeal for non-prosecution was impermissible and contrary to the provisions of the Act as the appeal filed ought to have been decided on merits and consequently, the impugned order passed by the learned CIT[A] requires to be vacated.*

*6. Without prejudice to the above and without prejudice to the right of the appellant to seek for waiver of the interest levied, the appellant denies itself liable to be charged to interest under Section 234-B and 234-D of the Income Tax Act, which :may, 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. It was submitted by Id. AR of assessee that the order of Id. CIT(A) is ex-parte qua the assessee and in this ex-parte order also, the issue was not decided on merit and the appeal of the assessee was dismissed in limine by following the Tribunal order rendered in the case of CIT Vs. Multiplan India Ltd. as reported in 38 ITD 320. He submitted that this is by now a settled position of law that even if an order is passed by any quasi judicial authority ex-parte, then also, the issue should be decided on merit. He submitted that since this was not done, the order of CIT (A) should be set aside and the matter should be restored back to the file of Id. CIT(A) for decision on merit. He submitted that if the matter is restored back to the file of Id. CIT(A), then the assessee will co-operate and appear before Id. CIT(A). The Id. DR of revenue supported the order of Id. CIT(A).
4. We have considered the rival submissions and in view of the facts discussed above, we set aside the order of Id. CIT(A) and restore the matter back to the

file of Id. CIT(A) for fresh decision on merit 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.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 28<sup>th</sup> August, 2019.  
/MS/

Copy to:

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.