

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A.K.GARODIA, ACCOUNTANT MEMBER**

ITA No.1133/Bang/2017
Assessment year : 2009-10

The CIBERsites India Pvt. Ltd., (formerly Iteamic Pvt. Ltd.) 6 th and 7 th Floor, Aquamarine Block, Bagmane Developers Pvt. Ltd., SEZ, KR Puram, Marathalli Ring Road, Bangalore-560 048. PAN – AABCI 1669 P.	Vs.	The Commissioner of Income- tax (Appeals)-3 Bangalore.
APPELLANT		RESPONDENT

Applicant by	:	Smt. Tanmayee Rajkumar, Advocate
Respondent by	:	Smt. Vandana Sagar, CIT (DR)

Date of hearing	:	26.08.2019
Date of Pronouncement	:	04.09.2019

ORDER

PER N.V. VASUDEVAN, VICE PRESIDENT

This is an appeal by the assessee is directed against the order dated 22/2/2017 of CIT(A)-III, Bengaluru relating to A.Y. 2009-10.

2. The assessee is a company engaged in the business of software development. For asst. year 2009-10, the assessee filed a return of income declaring a loss of Rs.7,91,31,383/-. The AO completed the assessment determining the loss at a sum of Rs.2,03,45,593/- after disallowing the claim of the assessee for deduction on account of provision for bad and doubtful debts as

well as Research and Development expenditure of a sum of Rs.1,54,10,479/- and Rs.4,33,75,311/- respectively.

3. Against the aforesaid addition made by the AO assessee preferred an appeal before the CIT(A). Before the CIT(A) appeal of the assessee was fixed for hearing on 5 occasions. The last one such occasion was on 8/2/2017. All the notices sent by the CIT(A) for hearing had been returned with a postal endorsement 'left return to sender'. The CIT(A) found that the notices were sent to the address given by the assessee in Form No.35. The CIT(A) also attempted to serve the notice at a different address found in the PAN address. Since all the notices were returned unserved, the CIT(A) proceeded to decide the appeal ex-parte. He found no grounds to interfere with the conclusions of the AO and accordingly confirmed the additions made by the AO.

3. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal.

4. In ground No.2, the assessee has challenged the action of the CIT(A) in deciding the appeal ex-parte. The plea of the assessee was that the assessee was earlier known as Iteamci Pvt. Ltd. and under a scheme of amalgamation got amalgamated with M/s CIBER Sites India Pvt. Ltd. The Scheme of amalgamation was approved by the Hon'ble High Court by its order dated 29/3/2011 in C.P No.263 & 264/2010. It was the plea of the assessee that the effective date of amalgamation as per the scheme was 1/4/2009. It has been pointed out that the AO's order was passed on 7/12/2011 and the appeal against the said order was preferred before the CIT(A) on 16/1/2012. Because of the amalgamation, the company had to change its registered office but failed to inform the office of the CIT(A) about the change of address. The reason for failure to intimate the change of address to the office of the CIT(A)

was explained thus by the Assessee. It was submitted that since the Assessee had no opportunity of being heard before CIT(A), the order of CIT(A) should be set aside and the issues remanded to CIT(A) for consideration afresh after affording opportunity of being heard to the Assessee.

5. We have considered the submissions of the assessee and are of the view that the assessee did not have proper opportunity of being heard before the CIT(A) for the reasons given above. In the interest of justice, we set aside the order of the CIT(A) and remand to the CIT(A) for fresh consideration the issues raised by the assessee before the CIT(A) on merits. The CIT(A) will afford opportunity of being heard to the assessee before deciding the issues. The assessee will also duly communicate the correct postal address to the office of the CIT(A) for issue of hearing notices.

6. In the result, the appeal by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **4th September, 2019.**

Sd/-

(A.K.GARODIA)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Vice President

Bangalore,
Dated, the 4th September, 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

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.