

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 778/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2012-13)

Kale Entertainment & Resorts Pvt. Ltd. 8, Nandadeep, Kailashpuri, Upper Govind Nagar, Malad (East), Mumbai-400 097	बनाम/ Vs.	ITO 12(3)(2), 1 st floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AACCK6915H		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Shashikant G. Goyal, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Drop Singh Meena, DR
सुनवाईकीतारीख/ Date of Hearing	:	06.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	19.02.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) – 20,

Mumbai in short referred as 'Ld. CIT(A)', Mumbai, dated 04.04.2017 for Assessment Year (in short AY) 2012-13.

2. The brief facts of the case are, assessee is a company engaged in the 'Contract Business of Construction' and filed its return of income on 30.09.12 declaring income of Rs. NIL. Further, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and served upon the assessee. In response, AR of the assessee filed the relevant information and attended to the proceedings of the case.

3. After considering the submission of assessee, AO disallowed certain expenditure and made the addition of Rs. 11,37,134/- under the head income from business and also disallowed short term capital loss of Rs. 2.50 crores and made addition u/s 68 of the Act to the extent of 25 lakhs under the head income from other sources. Further, AO set off of brought forward loss to the extent of Rs. 11,37,134/- and completed the assessment u/s 143(3) of the Act determining the taxable income at Rs. 2.75 crores.

4. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and filed appeal on 01.05.15 declaring existing address at that point of time in Form 35, however, Ld. CIT(A) issued several notices asking the assessee to appear before him for hearing and the notices were served through speed post. Since, none appeared on behalf of the assessee, Ld. CIT(A) dismissed the appeal of the assessee ex-parte.

5. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us on the following grounds:-

1. *The CIT(A) erred in confirming disallowance of Rs. 11,37,134/-out of expenditure claimed on the grounds that the same were not admissible.*

2. *The CIT(A) erred in not allowing short term capital loss of Rs. 1,62,92,942/-.*

3. *The CIT(A) erred in confirming addition under section 68 of the Act of Rs. 25,00,000/-*

4. *The CIT(A) ought to have allowed unabsorbed depreciation of the earlier years as depreciation for current year and ought to have allowed set off the long*

term capital gain against the unabsorbed depreciation of Rs. 1,09,95,842/-.

5. *The CIT(A) erred in holding that sufficient opportunities were given to the assessee, although no notices of hearing were received by the assessee.*

Your appellant, therefore, submits that the due relief be allowed.

Your appellant craves leave to add, to amend or delete all or any of the grounds of appeal at or before the date of hearing.

6. Before us, Ld. AR of the assessee brought to our notice that this appeal was filed belatedly due to the reasons given in affidavit and he submitted that assessee has shifted its office from the old address to the new address and brought to the notice of letters submitted before Ld. CIT(A). He further submitted that the delay in filing the appeal is only due to reason that even though the assessee filed several request before Ld. CIT(A) to give original order copy and after several follow up, assessee was not able to get an official copy and assessee could download the order from the Income Tax Website only on 12.03.18, therefore

the delay is only due to the aforesaid reasons and hardships faced by the assessee.

7. On merit, Ld. AR submitted that assessee is a public sector company owned by the Govt. of Maharashtra and submitted that the delay in filing the return of income is beyond the control of the assessee due to non-appointment of board of directors of the Govt. of Maharashtra, therefore, AO is not proper in denying the business loss declared by the assessee.

8. On the other hand, Ld. DR relied upon the orders passed by the tax authorities.

9. Considered the rival contentions and the material placed on record, we notice from the record that assessee has communicated the new address to the office of Ld. CIT(A) only after passing of the appellate order. The appellate order passed on 04.04.17 and assessee has intimated on 11th April 2018. Since assessee miserably failed to inform the office of Ld. CIT(A) about the change of address and now assessee cannot plead that the order was not served as well as notices were not served. We

notice that Ld. CIT(A) has dismissed the appeal without adjudicating on merits of the case and we take notice of the apparent failure of the assessee, we are inclined to impose the penalty of Rs. 10,000/- to be paid to the Prime Minister Relief Fund within 15 days from the receipt of this order and the proof of the remittance to be submitted before Ld. CIT(A).

10. In view of the above, we are inclined to remit this issue back to the file of Ld. CIT(A) to adjudicate the issue on merit after giving opportunity of being heard. Accordingly, grounds raised by the assessee are **allowed for statistical purposes.**

11. In the net result the appeal filed by the assessee is **allowed for statistical purposes.**

Order pronounced in the open court on 19th Feb 2020.

<i>Sd/-</i>	<i>Sd/-</i>
(Vikas Awasthy)	(S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member	लेखासदस्य / Accountant Member
मुंबई Mumbai; दिनांक Dated :	19.02.2020
<i>Sr.PS. Dhananjay</i>	

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai