

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-2 : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA Nos.3699/Del/2019
Assessment Year: 2006-07

Lipi Buildcon Pvt. Ltd., F. No.A, 218, Mangal Apartment, Vasundhara Enclave, New Delhi.	Vs	ITO, Ward-15(3), New Delhi.
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PAN: AABCL0881C

ITA No.3700/Del/2019
Assessment Year: 2006-07

Lipi Softech Pvt. Ltd., F. No.A, 218, Mangal Apartment, Vasundhara Enclave, New Delhi.	Vs.	ITO, Ward-15(3), New Delhi.
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PAN: AABCL0880D

(Appellant)	(Respondent)
Assessee by	None
Revenue by	Shri D.S. Yadav, Sr.DR
Date of Hearing	05.03.2020
Date of Pronouncement	13.03.2020

ORDER

The above two appeals filed by the respective assesses are directed against the separate orders dated 21st February, 2019 and 23rd August, 2018 of the CIT(A)-5, New Delhi, relating to the A.Y. 2006-07.

2. For the sake of convenience, both these appeals were heard together and are being disposed of by this common order.

3. None appeared on behalf of the assessee and it was noticed that the notice issued by the Registry through RPAD has come back with the postal remark -addressee left. Since the Id.CIT(A) in the *ex parte* order passed by him has followed the decision of the Tribunal in the case of *CIT vs. Multiplan India (P.) Ltd*, 38 ITD 320 (Del.) and the decision of the Honøble Supreme Court in the case of *CIT vs. B.N. Bhattacharjee & Anr.*, 118 ITR 461 (SC) and various other decisions, therefore, these appeals were heard on the basis of the material available on record and after hearing the Id. DR.

4. So far as Lipi Buildcon Pvt. Ltd. is concerned, i.e., in ITA No.3699/Del/2019, the assessee filed its return of income on 31.03.2007 declaring a loss of Rs.583/-. The AO, in the order passed u/s 143(3), made an addition of Rs.15 lakhs u/s 68 of the Act which was deleted by the CIT(A). On appeal filed by the Revenue, the Tribunal restored the issue to the file of the AO for fresh adjudication. Subsequently, the AO, in the order passed u/s 254 of the Act, determined the total income at Rs.15,25,376/- wherein he retained the addition of Rs.15 lakhs made u/s 68 of the Act and also the income earlier determined u/s 250 of Rs.25,376/-. Since none appeared before the CIT(A), the Id.CIT(A), in the *ex parte* order, passed by him, sustained the addition made by the AO.

5. Similarly, in the case of Lipi Softech Pvt. Ltd., i.e., in ITA No.3700/Del/2019, the assessee filed its return of income on 29th March, 2007 declaring a loss of Rs.15 lakhs and the AO completed the assessment u/s 143(3) wherein he made an addition of Rs.8 lakhs u/s 68 of the Act. The Id. CIT(A) deleted the addition and on appeal filed by the Revenue, the Tribunal restored the issue to the file of the AO for fresh adjudication. The AO, thereafter, completed the assessment determining the total income at Rs.8,05,755/- wherein he retained the addition of Rs.8 lakhs earlier made by the AO u/s 68 of the Act and also retained the income u/s 250 of the Act of Rs.5,755/- determined earlier by the AO. In appeal, the Id.CIT(A), in the *ex parte* order passed by him, sustained the addition made by the AO due to non-prosecution.

6. Aggrieved with such orders of the CIT(A), the respective assesses are in appeal before the Tribunal.

7. I have heard the Id. DR and perused the record. It is an admitted fact that there was no compliance from the side of the assessee before the CIT(A) for which the Id. CIT(A) in both the appeals has sustained the addition made by the AO. As per the provisions of section 250(4), the Id.CIT(A) before disposing of any appeal may make such further enquiry as he thinks fit or may direct the AO to make further enquiry and report the same to him. As per the provisions of section 250(6), the Id.CIT(A) while disposing of the appeal shall state the points for determination, the decision thereon and the reason for the decision. He simply

cannot dismiss the appeal for non-prosecution. Since, in the instant case, the Id.CIT(A) has not passed a speaking order in both the appeals and has summarily dismissed the appeals due to non-prosecution, therefore, I deem it proper to restore the issue to the file of the CIT(A) with a direction to adjudicate the issue afresh by passing a speaking order after giving one final opportunity to the assessee to substantiate its case. I hold and direct accordingly.

8. In the result, the appeals filed by the respective assessees are allowed for statistical purposes.

The decision was pronounced in the open court on 13.03.2020.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 13th March, 2020.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi