

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1356 to 1358/Bang/2019
Assessment years : 2009 – 10 to 2011 – 12

M/s. Divine Developers, #53, Ground Floor, 10 th Cross, 2 nd Main, 2 nd Stage, W. O. C. Road, Mahalakshmi puram, Bengaluru – 560 086. PAN : AAGFD2166G	vs.	ITO, Ward – 6 (2) (3), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Anu Rao, Partner of the Assessee Firm
Revenue by	:	Smt. R. Premi, JCIT (DR)
Date of hearing	:	26.02.2020
Date of Pronouncement	:	17.03.2020

ORDER

Per A. K. Garodia, Accountant Member

These three appeals are filed by the assessee and these are directed against three separate Orders of CIT (A) – 6 Bengaluru all dated 25.02.2019.

2. In course of hearing, learned AR of the assessee submitted that these three appeals of the assessee were dismissed by CIT (A) as unadmitted on

this basis that the assessee has not paid admitted tax but in fact, the assessee has already paid more than the admitted tax. He submitted that in the interest of justice, the matter may be restored back to the file of CIT (A) for a decision on merit after verifying the payment of admitted tax. He pointed out that in A. Y. 2009 – 10 as per Ground No. 3 raised by the assessee before the tribunal, the tax payable on the returned income was only Rs. 56,056/- and an amount of Rs. 7.58 Lacs is already paid by the assessee or collected by the department for this year. Similarly, he pointed out that in A. Y. 2010 – 11 as per Ground No. 3 raised by the assessee before the tribunal, the tax payable on the returned income was only Rs. 228,994/- and an amount of Rs. 394,558/- is already paid by the assessee or collected by the department for this year. Similarly, he pointed out that in A. Y. 2011 – 12 as per Ground No. 3 raised by the assessee before the tribunal, the tax payable on the returned income was only Rs. 210,871/- and an amount of Rs. 823,478/- is already paid by the assessee or collected by the department for this year. Learned DR of the Revenue supported the order of CIT (A).

3. We have considered the rival submissions and we find that as per the order of CIT (A) for A. Y. 2009 – 10, the tax payable on the returned income was Rs. 282,994/- as against Rs. 56,056/- stated by the assessee in Ground No. 3 raised before the tribunal for this year but even if the amount mentioned by CIT (A) is correct, the assessee has stated in the Ground No. 3 for this year raised before the tribunal that an amount of Rs. 7.58 Lacs is already paid by the assessee or collected by the department for this year. For the remaining two years, the amount of admitted tax is same as per the order of CIT (A) and as per the relevant ground raised by the assessee in these two years before the tribunal, it is claimed by the assessee that the payment by the assessee and/or collection by the department in these two years also is

more than the amount of admitted tax. But no evidence is produced before us about the payment of tax as claimed in Ground No. 3 raised before us in these three years and hence, we set aside the order of CIT (A) and restore the matter back to his file with the direction that the assessee should produce the evidence in this regard before CIT (A) and if the assessee is able to establish that admitted tax is paid then the CIT (A)n should admit the appeals and decide the same on merit. In view of this, no adjudication on merit is called for at the present stage.

4. In the result, all three appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated: March, 2020.

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

By order

Assistant Registrar,
ITAT, Bangalore.