

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य एव संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.201/JP/2020
निर्धारण वर्ष/Assessment Year : 2012-13

M/s. Triayudh Constructions (P) Ltd. E-60, Girdhar Marg, Sidharth Nagar Malviya Nagar, Jaipur	बनाम Vs.	The ITO Ward 6(5) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCT 1725 G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri K.L. Moolchandani, Advocate
राजस्व की ओर से/ Revenue by: Smt. Runi Paul , DCIT DR

सुनवाई की तारीख/ Date of Hearing : 25/08/2020
उदघोषणा की तारीख/Date of Pronouncement: 03 /09/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of Id.CIT (A)-2, Jaipur dated 23.12.2019 for the Assessment Year 2012-13 passed u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") raising following grounds of appeal.

"1. On the facts and in the circumstances of the case, the Id. CIT(A) has factually and legally erred in passing ex-parte the appeal order in ex-parte manner without appreciating the fact that none of the alleged fixation notice was received by the appellant and the appellant was prevented by reasonable

cause from attending the appeal proceedings. Thus the appeal order so passed deserves to be quashed summarily.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has factually and legally erred in passing appeal order in summary manner without deciding the appeal on ‘merits, contrary to the principles of equity and natural justice. Thus the appeal order so passed is bad in law and deserves to be quashed summarily.’

3. On the facts and in the circumstances of the case, the Id. CIT(A) has factually and legally erred in confirming the addition of Rs. 22,26,313/- made by the AO by invoking the provisions of Section 145(3) of the Act without appreciating the facts of the case in right perspective. Thus the addition so made deserves to be deleted summarily.’

2.2 Due to prevailing COVID-19 pandemic condition, the hearing of the appeal is concluded through video conference.

3.1 Apropos Ground Nos. 1 to 3 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“2.2 I have perused the facts of the case and the assessment order. In this case, the ample numbers of opportunities given to the appellants are tabulated below:

Date of hearing fixed	Remarks
12-12-2016	None Attended
13-02-2018	Authorised Representative filed an adjournment letter
10-05-2019	None Attended
22-05-2019	None Attended
11-10-2019	None Attended
20-12-2019	None Attended

2.2.1 In view of the above, it is clear that the appellant and the Authorised Representative are not interested in contesting the appeal and in spite of sufficient opportunity and time have not submitted any detail whatsoever. On merits it seems that assessee has nothing to say in support of ground of appeal taken. After careful consideration of the order, I find that Assessing Officer has rightly made the addition, hence ground of appeal are dismissed.”

3.2 During the hearing of the case, the Id.AR prayed that the fixation notices fixing the appeal for hearing on 10-05-2019, 22-05-2019, 11-10-2019 and 20-12-2019 were never received by the assessee. Therefore, the assessee was prevented by reasonable cause from making compliance of these notices. In support of this claim Id.AR of the assessee filed an affidavit of Shri Naresh Agarwal, Director of the company , confirming that the assessee has not received any notices. To this effect the Id.AR of the assessee has filed the written submission. The relevant portion of his prayer is as under:-

“7. Now coming to the present appeal order, it is noted that the Id. CIT (A) did not venture to deal with the points at issue in right earnest. She had merely repeated the facts of the case as mentioned in the body of the assessment order and the grounds of appeal as taken by the Appellant Co, she did not venture to deal with the points at issue on merits. Thus the appeal order so passed without discussing the merits of the case is bad in law and deserves to be quashed in limine. The appeal has been dismissed solely on the alleged ground of noncompliance of the fixation notices as per Para 2.2 of the Appeal Order as per following findings recorded in para 2.2.1 of the appeal order.

`In view of the above it is clear that the appellant and the Authorized Representative are not interested in contesting the appeal and in-spite of sufficient opportunity and time have not submitted any

detail what so ever. On merits it seems that assessee has nothing to say in support of grounds of appeal taken. After careful consideration of the order I find that Assessing Officer has rightly made the addition, hence ground of appeal are dismissed.

8. From the above findings it is noted that the Id. CIT (A) had failed to appreciate the facts of the case in right perspective. The Appellant Co. is an associate Company of M/s ABD Ltd.. wherein Survey operations were carried out u/s 133A of the Act on 13. 8.2012 involving both the Companies so it would have been in the fitness of things if appeals in both the cases would have been taken up simultaneously for both the years i.e. Asstt.Yr. 2012-13 & 2013-14. Accordingly, the assessments in both the cases were taken up simultaneously by the Id. AO and decided in coordinated manner. But thereafter, the ARs of the company became indifferent and did not defend the case before CIT (A) effectively due to communication gap between the AR and the Appellant Co. Accordingly, the appeals in the case of M/s ABD Ltd. could not be taken up effectively, resulting in dismissal of the same. Like-wise, the appeals in the case of appellant were not be taken up by these ARs in F.Yr. 2016 & 2018 and had stopped attending the appeal proceedings as explained in the case of M/s ABD Ltd. Accordingly no compliance could be made in the year 2016 & 18. The fixation notices fixing the appeal for hearing on 10.5.2019, 22.5.2019, 11.10.2019 & 20.12.2019 were never received by the Appellant Co. In the circumstances, the appellant was prevented by reasonable cause from making compliance of these notices. In support of this claim, an affidavit of Shri Naresh Agarwal, the Director of the Co. is submitted herewith confirming therein on oath that the appellant Co. did not receive any of such notice(Placed in PB at page No.8 & 9).

In the light of these facts, your honor would appreciate that the appellant Co. was prevented by reasonable cause from making compliance of the fixation notices as mentioned in the appeal order. More-over, from the communication as exchanged, it is seen that the appellant Co. had been sincerely trying to get the appeals decided in consolidated manner as early as possible along-with the Appeals in the associate Co. ABD Ltd. as evident from the set-aside appeal proceedings. The Co. had been attending the set aside proceedings regularly and properly and had also informed this fact to the Id. CIT (A) in the written submissions. Thus from the conduct of the appellant Co., it is evident that at no stage the appellant had ever tried to avoid to attend the appeal proceedings. In the circumstances, the Id. CIT (A) has incorrectly observed that the appellant was not interested in contesting the appeal and it had nothing to say in support of the appeal taken.

Lastly, even other-wise, the appeal has not been decided on merits as per judicial discipline on the point. Thus the order so passed without going into the merits of the case is bad in Law and the same deserves to be quashed. ‘

3.3 On the other hand, the ld. DR supported the order of the lower authorities.

3.4 We have heard the rival contentions and perused the materials available on record. At this stage, we are not going into the merits of the case, however, we noticed that assessee should be given chance to contest the case before the ld. CIT(A) as the assessee had not received the notices for hearing of the appeal before the ld. CIT(A) on 23-12-2019. Even the rights of the Revenue are also not going to be prejudiced. Therefore, in the interest of equity and justice, the appeal of the assessee is restored to the file of the ld. CIT(A) with directions to decide it afresh taking into consideration the grounds raised in Form No. 35. Thus the appeal of the assessee is allowed for Statistical purposes.

4.0. In the result, the appeal of the assessee is allowed for Statistical purposes.

Order pronounced in the open court on 03/09/2020.

Sd/-
(रमेश सी.शर्मा)
(Ramesh C. Sharma)
लेखासदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 03 /09/2020.

*Mishra

आदेश की प्रतिलिपि अग्रोषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Triayudh Constructions Pvt. Ltd. Jaipur
2. प्रत्यर्थी / The Respondent-The ITO, Ward- 6(5), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 201/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar