

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO.1720/MUM/2019 (A.Y: 2015-16)

M/s. Cosmos Premises Pvt. Ltd., 183/2, Royal Orchid Beach Resort Francisco Pereira Wadoo Uttorda, Salcete, Goa – 403713 PAN: AABCC6190R	v.	Commissioner of Income Tax (Appeals) – 24 3 rd Floor, Mittal Court Building Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Assessee by	:	Shri Niraj Sanghvi
Department by	:	Ms. Shreekala Pardeshi
Date of Hearing	:	03.12.2020
Date of Pronouncement	:	11.12.2020

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 24, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.12.2018 for the A.Y. 2015-16.
2. Assessee has raised the following grounds in its appeal: -

1. Your appellant is a Private Limited company whose main source and Business is of Hotel industry comprising of Room sales and Restaurant services.

2. For the assessment year 2015-16 your appellant had filed a return declaring total income of Rs. 3,00,59,410/- The return was processed u/s 143(1) of the Income Tax Act, 1961.

3. Subsequently, the case was selected for Limited scrutiny through E- assessment through email based communication and accordingly, notice u/s 143(2) of the Income Tax Act was issued. The notice u/s 143(2) of the Income Tax Act was issued on 19.09.2016 and duly served upon the appellant.

4. In response to notice u/s 143(2) of the Income tax Act, 1961, the appellant had replied through email on 26th September, 2016 with attachment of letter dated 24.09.2016 - Refer Annexure I & Form 26AS providing necessary information and explanation. The notice issued u/s 143(2) failed to provide any figures quantifying the differences arising between the return files and issues identified for examination.

5. The learned Deputy Commissioner of Income Tax (DCIT) 15(1)(1), Mumbai passed the ex-parte order u/s 143(3) of the I T Act, 1961 during assessment identifying total gross value of services as per AIR at Rs 13,95,45,990/- . Total gross value of services as per Income tax Return filed is Rs.14,01,32,515 (Rs 13,73,55,078/- Sales and Rs 27,77,437 Other Income). The department contention that assessee had escaped Income of Rs.21,90,918 cannot be accepted on two grounds. 1) It has not shared any information how the figure of Rs 13,95,45,990/- was derived (2) It has not considered Rs 27,77,437/- shown under other income (3) No response was received from the assessee when information was actually replied though email dated 26-09-2016 which totally been ignored by the department — Refer Annexure 2

6. The department accordingly taxed on addition of ₹.21,90,918/- (Rs 13,95,45,990/- less Rs 13,73,55,078/-) and demands of Tax of Rs. 9,56,930/- with interest.

7. Hence the contention justifying assessment u/s 144 of the Income Tax Act, 1961 cannot be accepted. Your appellant, therefore, objects to the additions to the income.

8. In response to the demand assessee preferred for an appeal and filed Form No 35 with Statement of facts and Grounds of Appeal to Commissioner of Income Tax (A) — 24, Mumbai vide acknowledgement No 374062591250118 on 25-01-2018.

9. *In response to appeal first notice for hearing was issued on 28-11-2018 for hearing on 06-12-2018 and second notice for hearing was issued on 07-12-2018 for hearing on 17-12-2018.*

10. *Commissioner of Income Tax (Appeals) — 24, Mumbai passed an ex parte order dismissing the case on the ground that appellant has no interest to pursue or prosecute the appeal.*

11. *The assessee wish to place on record that during both the notices served the assessee has filed application for adjournment of hearing on the compliance portal at www.incometaxindiaefiling.gov.in This has been totally ignored by the department. The copies of the acknowledgement.*

13. *Assessee wish to bring to the notice of the authority that company is engaged in business of hotel and restaurant and has its location of business in State of Goa. The company has its registered office at Pune, Maharashtra. There is delay in receipt of notice at Pune and thereafter at Goa. As a result on both the occasion assessee cannot attend the hearing. The company has now pursued the process of transfer of jurisdiction to state of Goa with the view to have better compliance with matter relating to Income Tax. The matter is pending at jurisdiction office.*

14. *Assessee wish to bring to your notice that apart from seeking reasonable*

15. *In view of the matter explained above and communication gap with the department and assessee make earnest request to reconsider the assessment. Accordingly assessee hereby pleads to the authority to reassess and reopen the case and accordingly rehear the matter.*

Assessee may therefore be granted reasonable time accordingly.

16. *The appellant craves to add, alter, and delete any of the grounds at the time of the hearing."*

3. At the outset, Learned Counsel for the assessee submitted that the Ld. CIT(A) disposed off the appeal without giving adequate opportunity of being heard to the assessee. Ld. Counsel for the assessee further submits that the assessment was made u/s. 143(3)/144 of the Act by the

Assessing Officer by making addition of ₹.21,90,918/-. Learned Counsel for the assessee submitted that there is a difference in turnover as shown by the assessee in its Books of Accounts and also as per AS26 as per AIR information. Learned Counsel for the assessee submitted that assessee has filed reconciliation statement which was also uploaded in the Income Tax Department Portal and the Assessing Officer without taking note of the reconciliation statement completed the assessment u/s. 144 of the Act and the Ld.CIT(A) also did not give adequate opportunity of being heard to the assessee to make its submissions and therefore, Ld. Counsel for the assessee submits that the matter may be restored to the file of the Assessing Officer for verification as the assessee has already uploaded the reconciliation statement in the Income Tax Department Portal even before completion of assessment.

4. Ld. DR has no serious objections in sending the matter back to the file of the Assessing Officer.

5. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Assessing Officer we find that the difference in turnover i.e. ₹.21,90,918/- was added while completing the assessment observing as under: -

"4. During the course of assessment proceedings the reasons of the selection are veiled from the documents available on the records, it is found that, the assessee has shown total turn over amounting to Rs. 13,73,55,0787- where as, as per the AIR generated data the total gross value of Services provided is Rs. 13,95,45,990/-, Therefore, the show cause dated 11.12.2017, was issued to assessee and asked why the difference of Rs. 21,90,918/- should not be treated as income. In response to this notice also no reply was received to the office. I am left with no alternative but to pass an exparte order u/s.144 of the Act as this is a time barring assessment."

6. It is evident from the above that the Assessing Officer passed an exparte order u/s. 144 of the Act as it was time barring assessment. It is the contention of the assessee that assessee filed reconciliation statement and uploaded it in Income Tax Department Portal which was ignored by the Assessing Officer while completing the assessment. On a perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) passed an exparte order there was no occasion for the assessee to make its submissions. In the facts and circumstances of the case and in the in the interest of justice we are of the view that this matter should go back to the file of the Assessing Officer for denovo verification and assessment. Thus, we restore the issue to the file of the Assessing Officer for denovo assessment after providing adequate opportunity of being heard to the assessee. Assessee is at liberty to file the necessary details reconciliation statements of turnovers as per books and AIR report before the Assessing Officer

explaining the difference. Thus, the grounds raised by the assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 11.12.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 11/12/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum