

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5070/Mum/2018
(निर्धारण वर्ष / Assessment Years: 2014-15)

Responsive Sutip Ltd. 906-907, Indraprashta Corporate, Prahlad Nagar, Opp. Shell Petrol Pump, Ahmedabad-480015.	बनाम/ Vs.	ITO, Ward-5 A. O., Aaykar Bhawan, BIDCO Road, Palghar (W), Palghar-401404.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECR6423K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Sanjeev Kapoor
Revenue by:	Shri Ashina Gupta

सुनवाई की तारीख / Date of Hearing: 06/01/2021
घोषणा की तारीख /Date of Pronouncement: 01/04/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 02.07.2018 passed by the Commissioner of Income Tax (Appeals)-03, Thane [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2014-15.

2. The assessee has raised the following grounds of appeal: -

- “ 1) That the order of the learned Assessing Officer is bad in law and on the facts of the case.
- 2) That the assessment was made without jurisdiction as the assessee company had shifted its Corporate Office to G-54, G Block, Viswas Park, Uttam Nagar, New Delhi - 110 059. it information was given vide letters dated 30.09.2015 and 22.01.2016 along with PAN particular from Income Tax Pan Service Unit.
- 3) That the assessee company made the necessary compliance of notice u/s 142 (1) of the Incom Tax Act 1961 dated 30.09.2016 vide letter dated 30.11.2016.
- 4) That the alleged notices dated 07.11.2016 and 06.12.2016 was not served on the assessee company at the latest communicated address. The notice dated 15.06.2016 was not served on the assessee company as alleged in the impugned assessment order.



ITA No.5070/M/2018
A.Y. 2014-15

- 5) That the alleged notice u/s 142 (1) dated 06.12.2016 was issued fixing the case for 13.12.2016. The same was not served on the assessee company. The assessee company received the show cause notice dated 13.12.2016 fixing the case for 19.12.2016 and necessary compliance was made vide letter dated 15.12.2016. The show cause notice was silent for an pending issue /query.
- 6) That no proceedings were initiated on the same date i.e. 19.12.2016. Any subsequent proceedings without issue of proper notice are invalid and not according to law.
- 7) That the learned assessing officer was predetermined for making the assessment which is evident from the proposition to initiate penalty proceeding u/s 271(1)(c) before completing the assessment, as per show cause notice dated 13.12.2016.
- 8) That the learned assessing officer has passed a non-speaking order and made the following additions/disallowances arbitrarily and without any justification:

Particulars	Expenses claimed	Expenses disallowed
Machinery repair	35,62,077	35,62,077
Interest	16,23,93,410	16,23,93,410
Other expenses	26,56,705	7,17,40,907
	19,46,12,192	23,76,96,394

- 9) That the learned Assessing Officer has incorrectly treated the returned income u/s 115JB of Rs (-) 31,41,39,759/- against the Nil income filed by the assessee company.
- 10) That the assessee craves leave to add amend or withdraw any ground of appeal at the time or before the hearing of appeal.
- 11) That the learned CIT (Appeals) has fixed the hearing date for appearance by representative of the Company dt. 11.07.2018, whereas the Ex-parte Order was convened by the learned CIT (Appeals) on 02.07.2018 itself, without giving any opportunity of being heard by the representative of the Company and has passed a non-speaking order, upholding the Order passed by the Income



ITA No.5070/M/2018
A.Y. 2014-15

Tax Officer. In lieu of this, the order of the learned CIT (Appeals) is bad in law.”

3. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. In fact, the Ld. Representative of the assessee did not argue the case on merits but argued on this point that the CIT(A) has decided the matter of controversy in absence of the assessee and without giving an opportunity of being heard to the assessee in accordance with law, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order passed by the CIT(A) dated 02.07.2018, we find that the CIT(A) has decided the matter of controversy in absence of the assessee/Representative of the Assessee without giving an opportunity of being heard to the assessee in the accordance with law. A proper and reasonable opportunity is required to be given to the assessee before deciding the matter of controversy in accordance with law.

4. For this proposition we place reliance upon the following case laws.

(1) CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 154 DTR (Bom) 302

(2) CIT Vs. S Chenniappa Mudaliar (1969) 74 ITR 1 (SC)

5. Accordingly in the interest of justice, we set aside the finding of the CIT(A) on all the issues and remit the issues raised in the appeal to the file of the Ld. CIT(A) to consider the issue afresh and pass an order on the merits of the case after giving a proper/reasonable opportunity of being heard to the assessee in accordance with law.



ITA No.5070/M/2018

A.Y. 2014-15

6. In the result, the appeal of the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 01 /04/2021

Sd/-
(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 01 /04/2021
Vijay Pal Singh/Sr. PS

Sd/-
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai