

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'C' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Ravish Sood (Judicial Member)]**

ITA No. 1856/Mum/2020
Assessment Years: 2012-13

M/s. Immense Infrastructure Pvt Ltd. **Appellant**
*Plot No.#D-197, T.T.C, Industrial Area, MIDC,
Turbhe, Navi Mumbai 400705[PAN: AABCI4116M]*

Vs.

Deputy Commissioner of Tax Officer-10 (1)
Mumbai. **Respondent**

Appearances:

Payal Dedhiya *for the appellant*

Shreekala Pardeshi *for the respondent*

Date of concluding the hearing : September 30, 2021
Date of pronouncement : September 30, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 28th October 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2011-12.

2. Grievances raised by the appellant are as follows:

1. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 22, Mumbai has erred in passing the order ex-parte thereby violating the principle of Natural justice.

2. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 22, Mumbai has erred in confirming the action of the Learned Assessing Officer of assessing the Rental Income of Rs. 64,12,500/- and Service Tax Charged thereon of Rs. 6,60,500/- under the head "Income from House Property" instead of "Profits and gains of Business and Profession."

3. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 22, Mumbai has erred in confirming the addition of property tax of Rs. 1,71,000/- as Notional Interest being 6 per cent of Interest free deposits of Rs. 28,50,000/- while computing Income under the head "Income from House Property".

4. Without prejudice to our contention that Lease rental income is chargeable to tax under the head Profits and gains of Business and Profession, in the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)-22, Mumbai has erred in not allowing deduction of Rs. 10,12,597/- paid towards Interest for acquisition of the property u/s. 24(b) of the Act.

3. When this appeal was called for hearing it was noticed that the impugned order is passed *ex-parte* dismissing the appeal primarily on ground that "the assessee is not interested in prosecuting the appeal as evident from the fact that the spite having been given opportunities of hearing, the assessee has not availed himself of these opportunities."

4. Ms. Payal Dedhiya, learned counsel for the assessee submitted that the non appearance before the learned CIT(A) was an inadvertent mistake on account of communication gap and given an opportunity for hearing once again, the assessee will fully cooperate in assuring expeditious disposal of appeal on merits and duly attend to the proceeding before the learned CIT(A). It was thus prayed that the matter be restored to the file of the learned CIT(A) for fresh adjudication on merits after giving one more opportunity of hearing to the assessee.

5. Ms. Shreekala Pardeshi, learned Senior Departmental Representative did not oppose the prayer for matter being restored to the file of the learned CIT(A) for fresh adjudication after giving get another opportunity of hearing to the assessee, even though she did point out that the assessee was given a fair opportunity of hearing by the learned CIT(A).

6. In view of the above and that the consent of the parties, we deem it fit and proper restored to the file of the Assessing Officer for fresh adjudication on merits, in accordance with the law, by way of speaking order and after giving yet another reasonable opportunity of hearing. Ordered, accordingly.

9. In the result, this appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 30th day of September 2021.

Sd/-
Ravish Sood
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 30th day of September 2021.

Copies to: (1) The Applicant (2) The respondent
 (3) CIT (4) CIT(A)
 (5) DR (6) Guard File

By order

*Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*