

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4857/Mum/2019

(A.Y: 2015-16)

M/s. AAP Realtors Ltd,CTS B-622,opp S H Kelkar and co,Balrajeshwar Road, Mulund (W), Mumbai - 400080.	Vs.	DCIT CC 4(2), Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No. : AAHCA0540M		
Appellant	..	Respondent

Appellant by :	Shri.Anuj Kishnadwala. AR
Respondent by :	Shri. Mehul Jain. DR

Date of Hearing	27.10.2021
Date of Pronouncement	29.10.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 52, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

1. The learned CIT(A) erred in law and in facts in not holding that the Assessement order u/sec143(3) of the Act passed by the AO is bad in law, illegal and null and void.

2. The learned CIT(A) has erred in law and in facts in not holding that the A.O. erred in passing the assessment order in gross violation of principles of natural justice.

3. The learned CIT(A) has erred in law and in facts in confirming the disallowance of Rs.14,14,557/- on account of selling and marketing expenses u/sec37(1) of the Act.

2. The Brief facts of the case are that, the assessee company is engaged in the business of real estate and construction activities. The assessee has filed the return of income for the A.Y 2015-16 on 31.10.2015 disclosing a total income of Rs.9,25,32,776/- Subsequently the case was selected for scrutiny and the A.O. has issued notice u/s 143(2) and 142(1) of the Act. In compliance, the Ld. AR of the assessee has furnished the details from time to time. There was survey u/sec133A of the Act on Transcon group on 22-01-2015 and various incriminating documents were impounded at the assessee's premises. The A.O. on perusal of the financial statements found that the selling and marketing expenses debited in the profit and loss account of Rs.1,41,45,569/- are not supported with the proper details and made adhoc addition @20%

which worked out to RS.14,14,557/-. Similarly made the addition of short fall of income disclosed in survey operations of Rs.5,41,067/- and assessed the total income of Rs.9,30,73,850/- and passed the order u/s 143(3) of the Act dated 13.10.2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the CIT(A) considered the grounds of appeal, findings of the A.O and the submissions and has confirmed the disallowance of selling & marketing expenses and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR made submissions on the admission of the additional evidence. The contentions of the Ld. AR are that the assessee was prevented by sufficient cause in submitting the information before the A.O in respect of selling and marketing expenses. The Ld. AR made submissions on the merits of the case and prayed for an opportunity of hearing to substantiate the case with the evidences before

the lower Authorities. Contra, the Ld. DR relied on the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is in respect of admission of additional evidence which could not be filed for various reasons. The contentions of the Ld. AR are that the additional evidence play a vital role in decision making and in the assessment proceedings, the assessee could not submit the complete details of invoices, bills and vouchers of selling & marketing expenses.

6. We have considered the facts, circumstances, additional evidences and the paper book. We are of the opinion that the assessee should not suffer for non filing of material information, as the evidences played vital role and we admit the additional evidence. Accordingly, to meet the ends of justice and considering the principles of natural justice, we set aside the order of the CIT(A) and restore the entire disputed issue along with the additional evidence to the file of the Assessing officer to decide on merits and the assessee should be provided adequate opportunity of hearing. The assessee should cooperate in

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filling the information for early disposal of the appeal and allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.10.2021.

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29.10.2021

SK, PS

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

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

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)

ITAT, Mumbai