

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 2816/Del/2019
(Assessment Year: 2014-15)

M/s. Clarkston Hotels Pvt. Ltd., 1114, Hemkunt Chamber, 89 – Nehru Place, New Delhi – 110 019. PAN: AADCS4480L	Vs.	ACIT, Circle : 6 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri A. K. Gupta, C. A.;
Department by :	Shri Mrinal Kumar Das, Sr. D.R.;
Date of Hearing :	15/11/2021
Date of pronouncement :	15/11/2021

ORDER

PER PRASHANT MAHARISHI, A.M. :

1. This appeal is filed by the assessee for assessment year 2014-15 against the order of the Id. Commissioner of Income Tax (Appeals)-2, New Delhi, dated 27.11.2018, raising the following grounds of appeal:-

“1. The order dated 27.11.2018 passed by the Id., Commissioner of Income-tax (Appeals)-2, Hall No 1, Room No 102, Aayakar Bhawab, Laxmi Nagar District Centre, New Delhi 110092 by confirming the additions of Rs.13,67,32,200/-made by Assessing Officer by disallowance of certain expenses, is bad in Law and on facts.

2. That the ex-parte order of the Ld. Commissioner of Income Tax (Appeals)-2, confirming the addition without providing the reasonable opportunity inspite of an adjournment application dated 26.11.2018 submitted in the office of Ld. CIT (Appeals)-2 had been rejected. The acknowledgment of the said letter has not been given by the Staff of the Ld. CIT (Appeals)-2. The assessee company also sent an email on 28.11.2018 with the reason of adjournment required for the said appeals. But, the reply to the email was also not been sent by the office of Ld. CIT (Appeals)-2. Instead of that the Ld. CIT (Appeals)-2 passed an Ex-parte order by confirming the additions made by Assessing Officer on 27.11.2018 which was dispatched by the office of

the Ld. CIT (Appeals)V2 on 17.12.2018 (Copy of the tracking of the Indian Post is Annexed herewith! without providing the reasonable opportunity of hearing,

3. On the fact brought on record, the Ld. CIT (Appeals)-2 ought to have deleted the additions made by the Assessing Officer. “

2. The ld. CIT (Appeals) has dismissed the appeal of the assessee filed against the assessment order passed under Section 143(3) of the Income Tax Act, 1961 (the Act) by the Asstt. Commissioner of Income tax, Circle 6(1), New Delhi, wherein the total loss of the assessee was determined at Rs.1,11,128/- as against the returned loss of Rs.13,68,43,328/-. The ld. CIT (Appeals) has dismissed the appeal of the assessee not on the merits of the case, but on the issue of non-prosecution.
3. The assessee submits that the assessee was not provided adequate opportunity of hearing before the ld. CIT (Appeals) despite submitting of an adjournment application on 26.11.2018. The assessee also submitted that the order was passed by the ld. CIT (Appeals) on 27.11.2018. However, on 28.11.2018 assessee also requested for adjournment by e-mail. Therefore, the only grievance of the assessee is that appeal has been dismissed by the ld. CIT (Appeals) on the issue of non-prosecution.
4. The ld. DR submitted that assessee was given six opportunities. Assessee merely sought an adjournment or did not comply with the notices.
5. We have carefully considered the rival contentions and find that the appeal of the assessee was dismissed by the ld. CIT (Appeals) on account of non-prosecution. It is also the fact that the ld. CIT (Appeals) issued six notices to the assessee. However, assessee either sought adjournment or did not appear before the ld. CIT (Appeals). We have also perused the order of the ld. CIT (Appeals) which has not decided the issue on the merits of the case. We find that each appeal is required to be decided on its own merits. In the present case, the appeal of the assessee is not decided on the merits. Therefore, it is required to be set aside back to the file of the ld. CIT (Appeals) for his decision on the merits. Further, the assessee has also not complied with the notices issued by the ld. CIT (Appeals). Therefore, in the interest of justice, we set aside the whole appeal back to the file of the ld. CIT (Appeals) with direction to the assessee to submit all the documents and pleadings before him within three months from the date of this order. The ld. CIT (Appeals) may thereafter issue notice to the assessee, if required. The assessee is directed to comply with such notices in a reasonable manner. Thereafter, the ld. CIT (Appeals)

may decide the issue on the merits of the case. Accordingly, appeal of the assessee is allowed with above directions.

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

Order pronounced in the open court on 15/11/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 15/11/2021

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1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	