

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI R.K.PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.1166/Del/2017  
(ASSESSMENT YEAR 2011-12)**

Universal Buildwell (P) Ltd. 102, Antriksha Bhawan, 22, Kasturba Gandhi Marg, Connaught Place, New Delhi-110001.  PAN-AAACU 7238F <b>(Appellant)</b>	Vs.	Addl. CIT, Range-18, New Delhi.  <b>(Respondent)</b>
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Appellant By	<b>None</b>
Respondent by	<b>Sh. Bhopal Singh, Sr. DR</b>
Date of Hearing	<b>02.11.2021</b>
Date of Pronouncement	<b>24.01.2022</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 19.08.2016 passed by the Learned Commissioner of Income Tax (Appeals)-9, New Delhi {CIT(A)} and pertains to Assessment Year 2011-12.

2. The brief facts of the case that that the assessee company, during the year under consideration, was engaged in the business of development and construction (Real Estate activities).

The return of income was filed declaring a total income of Rs. 4,94,7,5585/-. The case was selected for scrutiny and the assessment was completed at an income of Rs. 5,51,52,518/- after making the following additions:-

1. Disallowance of mutation expenses – Rs. 98,000/-
2. Disallowance of filing fee and Registration charges paid to ROC – Rs. 1,11,242/-
3. Disallowance u/s 14A – Rs. 28,44,995/-
4. Disallowance of depreciation on unsold stock – Rs. 7,81,806/-
5. Disallowance on commitment charges – Rs. 12,809/-
6. Unexplained payment to directors – Rs. 9,84,000/-
7. Unrecorded difference in balance of sundry creditors – Rs. 84408/-.

2.1 Aggrieved, the assessee took the matter before the Ld. CIT(A). However, the assessee was not represented before the Ld. CIT(A). The Ld. CIT(A) passed the order ex-parte qua the assessee giving partial relief to the assessee by deleting the disallowance made by the Assessing officer u/s 14A to the tune of Rs. 28,44,995/-. However, all other disallowances and additions were upheld.

2.2 Now, the assessee has approached this Tribunal challenging the upholding of disallowances / additions by raising following grounds of appeal:-

*“1. That on the facts and circumstances of the case and in law, the order passed by CIT(A)-9, New Delhi {hereinafter referred to as CIT (A)} is bad in law.*

*2. That on facts and circumstances of the case and in law the Order passed by Ld. CIT(A) is illegal and bad in law as the same has been passed without providing reasonable opportunity of being heard to the Appellant.*

*3. That on facts and circumstances of the case and in law the Ld. CIT (A) was not justified in upholding the action of the AO in disallowing the sum of Rs.98000/- out of the administration and other cost in the profit and loss account claimed by the assessee company as mutation expenses holding that such expenses are not revenue expenditure in nature.*

*4. That on the facts and circumstances of the case and in law the Ld. CIT (A) was not justified in upholding the action of the AO in making addition to the returned income of Rs.1,11,242/- ( filing fee of Rs.18,792/- and registration charges of Rs.92,450/-) on the presumption that the expenses are incurred towards increase in authorized share capital without appreciating that there has been no increase in authorized share capital of the company during the year.*

*5. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the AO in making disallowance of Rs.7,81,806/- on account of*

*claim of depreciation under the head furniture on account of fit outs made, in unsold stock let out to various tenants and on which rental income has been claimed. The AO has erred in treating the expenses incurred for fit out in unsold stocks as capital expenditure for which depreciation is not allowable.*

6. *That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the AO in disallowing the sum of Rs.12,809/- out of the commitment charges incurred under the provisions of Section 40A(2)(b) of the IT Act'1961.*

7. *That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the AO in making addition of Rs.9,84,000/- to the returned income on the presumption that the commitment charges paid to the directors as mentioned in Form 3CD of the auditor's report refers the commitment charges paid to Mr Vikram Puri and Mr Varun Puri as unexplained payment to the directors.*

8. *That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the AO in disallowing the sum of Rs.8,44,081/- by treating the said sum as income u/s 41(1) of the IT Act' 1961 appearing under the head as sundry creditors in the books of the assessee.*

9. *That the appellant craves leave to add, alter, amend, modify any of the grounds of appeal at the time of hearing or earlier."*

3.0 None was present on behalf of the assessee when the appeal was called out for hearing. No application for adjournment

has also been received in this regard. A perusal of the order sheet entries show that earlier this appeal was fixed for hearing on 07.01.2021, 18.03.2021 and 11.08.2021 and on all these three occasions, the assessee was not represented. A perusal of the record further shows that the notice for hearing on 11.08.2021 was sent by Speed Post by the Registry of the Tribunal and this notice has been returned un-served. A further perusal of the record shows that vide order sheet entry dated 11.08.2021, the Ld. DR. was requested to get the notice of today's hearing served through the good offices of the Income Tax Department. However, in spite of all these efforts the assessee has chosen not to be represented before us. Under such circumstances, we have no option but to proceed with the hearing ex-parte qua the assessee.

4.0. A perusal of the impugned order shows that the Ld. First Appellate Authority has confirmed the additions and disallowances on the ground that no submissions had been forthcoming on behalf of the assessee on the issues before him. Therefore, apparently, the issues have not been decided on merits by the Ld. First Appellate Authority. We do note from the impugned order that the assessee had been afforded as many as

seven opportunities by the Ld. CIT(A) to present its case but the assessee choose not to be represented. While taking a serious exception to the conduct of the assessee in this regard, all the same, it is our considered opinion that the interest of substantial justice should be served. Accordingly, since the Ld. CIT(A) did not adjudicate on the merits of the case, we deem it expedient to restore the appeal to the office of the Ld. First Appellate Authority with a direction to adjudicate the remaining issue at hand on merits after giving an adequate opportunity to the assessee to present its case. The assessee is also directed to comply with the notices being issued by the office of the Ld. First Appellate Authority, this time failing which, the Ld. CIT(A) will be at liberty to pass the order ex-parte qua the assessee as per the provisions of the Act.

5. In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 24.01.2022.

Sd/-

Sd/-

**(R.K.PANDA)**  
**ACCOUNTANT MEMBER**

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 24/01/2022

PK/ rkk

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI