

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 272/Mum/2020
(A.Y: 2013-14)

Neumec Estate Developers LLP G-3, Natwar Chambers, 94, Nagindas Master Road, Fort, Mumbai – 400 023.	Vs.	ITO – 17(2)(4) 112, Kautilya Bhavan, G-Block, BKC, Bandra East, Mumbai – 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFN6978R		
Appellant	..	Respondent

Appellant by :	Shri Aditya Maheswari.AR
Respondent by :	Shri Rajesh Kumar Yadav.DR

Date of Hearing	23.03.2022
Date of Pronouncement	25.03.2022

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)-58, Mumbai passed 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *That on the facts and circumstances of the case, the A.O has erred in treating interest Rs. 1,80,979/- on fixed*

deposit given for bank guarantee for business necessity as income from other sources.

2. *That on the facts and circumstances of the case, the Ld. AO erred in reducing a sum of Rs. 166/- being interest on delay in payment of VAT, Rs. 6,527/- being interest on TDS and Rs. 71,400/- being interest on service tax from work in progress.*

3. *That on the facts and circumstances of the case the AO erred in reducing a sum of Rs. 5,22,974/- being depreciation on Motor Car from work in progress.*

4. *That on the facts and circumstances of the case, the AO erred in reducing a sum of Rs. 2,049,985/- from work in progress, being proportionate disallowance of interest on business advances granted by the LLP*

5. *That on the facts and circumstances of the case, the Ld. AO erred in reducing a sum of Rs. 412,004/- from work in progress being donation.*

6. *That on the facts and circumstances of the case, the AO erred in reducing a sum of Rs. 1,041,000/- from work in progress being brokerage paid relates to business.*

7. The appellant craves to add further ground or to amend or alter the exiting ground on or alter the existing ground on or before the date of hearing.

2. The brief facts of the case are that the assessee is engaged in the business as builders and developers. The assessee has filed the return of income for the A.Y 2013-14 on 01.10.2013 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The assessee is a LLP has undertook two projects at different places in Mumbai, whereas the Assessing officer (A.O) on perusal of the facts and information found that the interest accrued on fixed deposits was not disclosed under the head Income from other sources. Whereas the A.O considering the disclosure in Form.no. 26AS is of the opinion that the interest should be taxed under income from other sources. The assessee has filed the explanations on the set off of interest income against the interest expenditure. Whereas, the A.O. has

reworked the work in progress(W I P) at Vile Parle and Ghatkopar projects referred at Para 10 of the order with the disallowance of depreciation, interest, commission & brokerage and donations. Finally the A.O. has treated the interest income taxable under income from other sources and assessed the taxable income of Rs.1,80,979/- and passed the order u/s 143(3) of the Act dated 28.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). At the time of hearing none appeared on behalf of the assessee and the CIT(A) considering the grounds of appeal, findings of the A.O. has granted partial relief and partly allowed the assessee's appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the ld. AR submitted that the CIT(A) erred in sustaining the additions and has overlooked the various factual aspects of the projects. The Ld. AR substantiated the submissions in the paper book with the documentary evidences. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the ex-parte order considering the fact that there is no appearance nor any submissions are filed by the assessee in spite of providing adequate opportunity of hearing and relied on the material available on record. The CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and partly allowed the appeal. We on perusal of the CIT(A) found that the Ld.CIT(A) has issued the notices of hearing and e mail, but there was no response.

6. We find that the assessee has raised grounds of appeal challenging the additions by the A.O. and there could be various reasons for non appearance which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case along with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for

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

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

Order pronounced in the open court on 25.03.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.03.2022

KRK, 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