

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

ITA No. 4167/Mum/2019
(A.Y: 2012-13)

M/s Parasmani Developers C/o Kiran Nahar, Prabhu Bungalow, Khare Compound, Dahanu Road, Palghar – 401404 Maharashtra.	Vs.	ITO – 3 Aayakar Bhavan, BIDCO Road, Palghar, Dist, Palghar -401404 Maharashtra.
PAN/GIR No. : AABFP5161G		
Appellant	..	Respondent

Appellant by :	Mr.Anil Thakkar.AR
Respondent by :	Ms.Indira Adakil.DR

Date of Hearing	13.04.2022
Date of Pronouncement	21.04.2022

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)-3, Thane passed u/s 143(3) and 250 of the Act. The assessee has filed the following grounds of appeal:

- 1. The Ld. CIT(A) is erred in confirming addition of Rs. 20,00,044/- as unexplained unsecured loan.*

2. *The appellant request to delete the addition confirmed by the CIT(A).*
3. *The appellant craves to add, alter or omit any or all of the above grounds of appeal before or at the time of hearing of the appeal*

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal. The assessee has filed an affidavit for condonation of delay and we find the facts mentioned in the affidavit are reasonable and acceptable. The Ld.DR has no specific objections. Accordingly, we condone the delay and admit the appeal.

3. The brief facts of the case are that the assessee is a partnership firm and is engaged in the business of construction of commercial and residential projects. The assessee has filed the return of income for the A.Y 2012-13 on 30.09.2012 declaring 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 were issued. In compliance, the Ld. AR of the assessee appeared from

time to time and submitted the details supporting the return of income and the financial statements in the course of hearing proceedings. The Assessing officer (A.O) on perusal of the financial statements found that the assessee is engaged in the business of construction of commercial and residential project at Dahanu and has disclosed opening work in progress of Rs. 1,47,52,828/- after debiting purchases and expenses and whereas the closing work in progress disclosed of Rs. 2,88,43,856 and there was no sales. The A.O found that the assessee has obtained unsecured loans during the financial year and required the assessee to submit the copies of return of income and bank statements of concerned parties. In compliance, the assessee has furnished the names and ledger account copies of two loan lenders. Subsequently, the A.O has issued notice u/s 133(6) of the Act on the parties and the said notices were un-served by the postal authorities in the case of M/s Aman Enterprises and no reply or acknowledgement was received from Mr. Raju Shah. The A.O. considering the facts, has doubted the genuineness of the transaction and made an addition as unexplained unsecured loan of the assessee.

Similarly, the A.O. has called for the explanations in respect of the expenditure but the A.O found that the expenses are not properly supported with the vouchers. The A.O has made a detailed observations in respect of expenses at page 8 of the order and assessed the total income of Rs. 20,22,040/- and passed the order u/s 143(3) of the Act dated 18.03.2015.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas at the time of hearing none appeared in the appellate proceedings, therefore the CIT(A) relied on the findings of the A.O. and upheld the action of the A.O. and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld.AR of the assessee submitted that the Ld.CIT(A) has passed an ex parte order and prayed for an opportunity of hearing to substantiate the case on merits with the evidences before the appellate authority. Contra, the Ld. DR supported the order of the CIT(A).

6. We have 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 detailed submissions are filed by the assessee in spite of providing adequate opportunity of hearing. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. We on perusal of the CIT(A) found that the Ld.CIT(A) has issued the notices of hearing referred at page 3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not inclined to prosecute the appeal.

7. 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.

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

Order pronounced in the open court on 21.04.2022

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21.04.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

1.

आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	18.04.2022		PS
2.	Draft placed before author	19.04.2022		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			