

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
“A” BENCH MUMBAI**

**BEFORE SHRI BASKARAN B R, ACCOUNTANT MEMBER&  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.342/MUM/2021  
(A. Y:2012-13)**

M/s. Awas Developers & Constructions Pvt. Ltd. Room No. 6, 3 <sup>rd</sup> Floor, Capri, Anant Kanekar Marg, Bandra East, Mumbai-400051	Vs.	Deputy Commissioner of Income Tax, Central Circle 5(4) Mumbai-400021
<b>Pan No. AADCA0702D</b>		
<b>Appellant</b>	..	<b>Respondent</b>

Appellant by	None
Respondent by	Shri Manoj Sinha.DR.

Date of Hearing	19.09.2022
Date of Pronouncement	23.09.2022

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed an appeal against the order of Commissioner of Income Tax Appeals(CIT(A))53-Mumbai passed under 250 of Income Tax Act 1961(hereinafter in short “the Act”).

The assessee has raised following grounds of appeal.

- 1) *The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of issuing notice issued u/s 148 and erred in initiating the reassessment proceedings. The notice issued u/s 148 is bad in law. The conditions stipulated u/s 147 is not satisfied. The reassessment order passed by the Learned AO may be treated as invalid. The Appellant prays that reassessment order passed by the Learned AO may be cancelled.*
- 2) *The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of making addition/disallowance of Rs.2,11,57,431/- u/s. 14A r.w.s 8D of the Income Tax Act, 1961.*
- 3) *The Appellant craves leave to add to and/ or amend and/ or delete and/ or modify and/ or alter the aforesaid grounds of appeal as and when the occasion demands.*
- 4) *All the aforesaid grounds of appeal are independent, in the alternative and without prejudice to one another.*

2. The brief facts of the case that the assessee is engaged in the business as builders and developers. The assessee has filed the return of income for the Assessment year 2012-13 on 29.02.2012 disclosing a total income of Rs. Nil and the assessment was completed under Section 143(3) on 18.02.2015 with total income of Rs. Nil. Subsequently, the Assessing Officer has received the information that the income has been under assessed and has a reason to believe that the income has escaped in assessment and issued notice

under Section 148 of the Act and the assessee was also provided the reasons recorded for reopening assessment. The assessee has filed return of income on 5.04.2018 in compliance to notice disclosing a total loss of Rs.31,10,84,070/-.

3. Subsequently, the notice under Section 143(2) and 142 of the Act are issued. Whereas a show cause notice was issued for disallowance of Rs.2,28,00,623/- u/sec14A of the Act and the assessee has filed the letter dated 03.02.2018 placed at Para 6 of the order. Finally, the Assessing Officer applied the provisions of Section 14A r.w.r.8D of I T Rules and made disallowance of Rs.2,11,57,431/- and assessed the total loss of Rs.28,99,26,640/- and passed the order under Section 143(3) r.w.s 147 of the Act dated 19.12.2018.

4. Aggrieved by the order the assessee has filed an appeal with the CIT(A). Whereas, CIT(A) considered the grounds of appeal, finding of the scrutiny assessment and since there was no compliance in respect of the notices, the CIT(A) has confirmed the validity of reassessment proceedings and the action of the Assessing Officer in making disallowance under Section 14A of the Act and dismissed the assessee's appeal. Aggrieved by the order CIT(A), the assessee has filed an appeal with the Honorable Tribunal.

5. At the time of hearing none appeared on behalf of the assessee and Learned DR submitted that the assessee has not filed the information before lower authorities and supported the order of the CIT(A).

6. We heard the DR submissions and perused the material on record. Prima-facie the CIT (A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. 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 find the Ld. CIT(A) has issued the notices of hearing referred at page 2 of the order, but there was no response and thus the Ld. CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. We find that the assessee has raised grounds of appeal challenging the validity of Assessment and addition of the assessing officer and there could be various reasons for non appearance which cannot be overruled.

7. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case before the CIT(A) 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 cooperate in submitting the

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

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

Order pronounced in the open court on the 23rd day of, September 2022.

Sd/-

**(BASKARAN BR)**

**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**

**JUDICIAL MEMBER**

Mumbai, Dated: 23/09/2022

M. Sonavane

**Copy of the Order forwarded to:**

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

BY ORDER,  
(Dy./Asstt.Registrar)ITAT,  
Mumbai