

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.866/Bang/2022
Assessment Year : 2013-14

M/s. SSJV Projects Private Limited, Ground Floor, No.21/6, Craig Park Layout, M. G. Road, Bengaluru – 560 001. PAN : AAACU 3698 R	Vs.	Income Tax Officer, Ward – 6[1][3], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. K. R. Narayan, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.10.2022
Date of Pronouncement	:	27.10.2022

ORDER

Per N. V. Vasudevan, Vice President:

This appeal filed by the assessee against the order dated 20.07.2022 by the National Faceless Appeal Centre (NFAC), Delhi, in relation to Assessment Year 2013-14.

2. The AO passed the Order of Assessment under section 143(3) dated 31.03.2016. Against the additions made in the said order, assessee filed an appeal before the CIT(A) – 6, Bengaluru who disposed off the appeal by an order dated 09.02.2018. Against the said aforesaid orders of the CIT(A), assessee filed appeal before the Hon’ble ITAT. The Hon’ble ITAT in ITA Nos.2195 and 2196/Bang/2018, order dated 24.02.2018, remanded the matter to the CIT(A) for fresh consideration.

3. Pursuant to the order of the ITAT, the CIT(A) fixed the hearing of the case vide notice dated 05.07.2022 calling upon the assessee to file reply on or before 15.07.2022. The assessee filed its reply electronically and the acknowledgment for having filed such a reply along with annexures is available at page 28 of the appeal memo.

4. The CIT(A), however, proceeded to dismiss the appeal of the assessee for the following reasons:

“6. During the present appellate proceedings several notices were issued to the appellant but no reply has been filed. Details are as under —

<i>S. No.</i>	<i>Date of Compliance</i>	<i>Date of Hearing</i>	<i>Comments</i>
1.	25.05.2022	06.06.2022	<i>Neither any reply was filed nor any adjournment was sought</i>
2.	08.06.2022	17.06.2022	<i>Neither any reply was filed nor any adjournment was sought</i>
3.	20.06.2022	29.06.2022	<i>Neither any reply was filed nor any adjournment was sought</i>

7. As the assessee has failed to controvert the findings of the AO as given in the assessment order, the addition to capital gain of Rs. 4,85.09.000/- is hereby confirmed and all the grounds of appeal are dismissed.

In the result the appeal is dismissed.”

5. Aggrieved by the aforesaid order of the CIT(A), assessee has filed the present appeal before the Tribunal. Ground No.2 raised by the assessee reads as follows:

“2. The appellate order passed by the learned Commissioner of Income – tax [Appeals], NFAC is in grave violation of principles of natural justice for the following reasons:

- [i]. The learned Commissioner of Income-tax [Appeals] has erroneously stated that the appellant has on various hearing dates has not responded to the notices of hearing nor has sought adjournment. The said observation of the learned Commissioner of Income-tax [Appeals] is patently erroneous and not as per actual facts, the appellant has on every occasion has infact sought time, thus the observation made by the learned Commissioner of Income-tax [Appeals] is bad in law and in accordance with actual facts, on the facts and circumstances of the case.*
- [ii]. The learned Commissioner of Income-tax [Appeals], has in his appellate order has conveniently not specified, not mentioned nor considered the latest notice of hearing issued under section 250 of the Act 05/07/2022 issued by him posting the hearing of the case on 15/07/2022, which is perverse, which is against the principles of natural justice consequently the appellate order passed by the learned Commissioner of Income-tax [Appeals], is bad in law, on the facts and circumstances of the case.*
- [iii]. The learned Commissioner of Income-tax [Appeals] has failed to consider detailed submissions made by the appellant along with supporting documents on the date of hearing i.e. 15/07/2022, which were conveniently not considered and given a complete go by and consequently passed a perverse order which is against the principles of natural justice, on the facts and circumstances of the case.*
- [iv]. The appellate order passed by the learned Commissioner of Income-tax [Appeals] is in grave violation of principles of natural justice and also not as per actual facts and consequently the impugned appellate order*

requires to be cancelled, on the facts and circumstances of the case.”

6. It can be seen from ground No.2 that the assessee has specifically challenged the order of the CIT(A) on the ground that there has been violation of the principles of natural justice in as much as the reply filed by the assessee dated 15.07.2022 has not been considered by the CIT(A) nor has any reference to the said notice of the CIT(A) dated 05.07.2022 in the reply of the assessee dated 15.07.2022 referred to by the CIT(A) in the impugned order. From the details filed in the appeal along with the appeal memo, it is clear that the assessee has furnished a reply on 15.07.2022 and the detailed written submissions along with annexure filed by the assessee before CIT(A) and are available at pages 28 to 55 of the appeal memo. In the given facts and circumstances, we are satisfied that the assessee was not afforded proper opportunity of being heard by the CIT(A). We, therefore, set aside the order of the CIT(A) and remit the case to the CIT(A) for a fresh disposal of the various grounds of appeal raised by the assessee, after affording opportunity of being heard to the assessee.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,
Dated: 27.10.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.