IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1512/Mum/2020
(Assessment Year 2011-12)

Gurunanak Developers India P. Ltd. Plot No.9/10/11, Garden Lane, L.B.S. Ghatkopar (W), Mumbai-400 086 (Appellant)	Vs.	DCIT Ward 10(2) Room No.432, 4th Floor, Aaykar Bhavan M.K. road, Mumbai-400 020 (Respondent)

PAN No. AACCG5435C

Assessee by	:	MS. Ritika Agarwal, AR
Revenue by	:	Shri Prabhat Kumar Gupta, DR

Date of hearing: 07.09.2022
Date of pronouncement : 16.11.2022

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee/appellant for assessment year 2011 – 12 against the appellate order passed by the Commissioner of income tax (appeal) 22, Mumbai dated 13/2/2020 wherein the appeal filed by the assessee on 24/4/2014 against the assessment order passed u/s 144 of the income tax act 1961 (the act) dated 27/3/2014 by the Deputy Commissioner of income tax – 10 (2), Mumbai (the learned AO) was dismissed in limine being non-admissible.

02. Assessee raised following grounds of appeal

> *"1. BECAUSE, the ld. CIT(A) has erred in law and on facts in refusing to consider the 'corrected computation of income' filed by the appellant before the assessing officer, in due exercise of its right to do so in view of decision of hon'ble*

Bombay High Court in the case CIT vs. M/s Pruthvi Brokers & Shareholders (P) Ltd reported in (2012) 349 ITR 336.

2. BECAUSE, the tax demand as attributed to corrected 'computation of income' (filed before the Assessing Officer himself during the course of assessment proceedings) represented 'undisputed demand' within the meaning of sub-section(4)(a) of section 249 and the ld.CIT(A) on a due and correct interpretation and appreciation of law, the ld.CIT(A) should have admitted the appeal for due adjudication as per provision of law.

3. BECAUSE, the ld. CIT(A) has failed to appreciate that taxes paid by the appellant, aggregating Rs. 1,01,90,940/- was sufficient to cover the 'undisputed tax liability' as had arisen out of the corrected computation of income filed by the appellant.

4. BECAUSE, the ld. CIT(A) has erred in law and on facts in dismissing the appeal in limine by mis application of the provisions of section 249(4)(a) of the Act.

5. BECAUSE, in any case and on a reasonable interpretation of provision of law, the ld.CIT(A) should have admitted the appeal for due adjudication of various claims as had been made in corrected 'computation of income' as had been filed during the course of assessment proceedings, as per particulars given in Annexure-I hereto."

03. Brief facts of the case shows that that assessee is a company engaged in the business of construction and development of residential projects. It filed its return of income on 29/9/2011 declaring a total income of ₹ 56,801,752/– the return of income was picked up for scrutiny by issue of notice u/s 143 (2) of the act. The assessment proceedings culminated into an assessment order passed u/s 144 of the income tax act 1961 on 27/3/2014 where the total income of the assessee is assessed at ₹ 262,804,950/–.

04. Assessee aggrieved with the assessment order preferred an appeal before the learned CIT – A Mumbai, the appeal of the assessee was dismissed as not admitted as assessee has not paid the taxes due on its admitted income and incomes of provisions of Section 249 (4) of the income tax act, the appeal can neither be admitted nor be maintained regardless of the fact that appellant had made submission on the ground of appeal raised in hearings have taken place on various dates. Accordingly the appeal of the assessee was dismissed as not admitted. Assessee aggrieved with that order has preferred appeal before us.

05. The learned authorized representative has filed detailed paper book containing 353 pages on the merits of the issue. The learned departmental representative vehemently submitted that when the appeal was not admitted before the learned CIT – A for the non-payment of the tax, the assessee could not have filed an appeal before the ITAT. Therefore the appeal of the assessee deserves to be dismissed.

06. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has failed to pay admitted tax and therefore the learned CIT – A is correct in dismissing the appeal of the assessee by not admitting the same.

07. Before us, the learned authorized representative submitted that now the assessee is ready to pay the taxes as admitted in the return of income or as per the revised computation of income submitted before the learned assessing officer. In view of the submission of the learned authorized representative we remit the appeal back to the file of the learned CIT – A with a direction that if the assessee pays the admitted tax, the learned CIT – A is directed to admit the appeal of the assessee on payment of such taxes and then decide the issue on the merits of the case. The onus would be on the assessee to pay the admitted tax as per the satisfaction of the learned CIT – A.

08. In the result appeal of the assessee is allowed for statistical purposes with above direction.

Order pronounced in the open court on 16.11.2022.

Sd/-	Sd/-
(SANDEEP SINGH KARHAIL)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 16.11.2022
Sudip Sarkar, Sr.PS
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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai