

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.2407/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT, Central Circle-2, Thane Room No. 13, A Wing Ashar IT Park Wagle Industrial Estate, Thane.	बनाम/ Vs.	M/s. Rohit Infra Projects Pvt. Ltd. 1 st Floor, New S. T. Stand, Khopat, Thane (West)-400601.
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आयकर अपील सं/ I.T.A. No.2431/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2007-08)

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आयकर अपील सं/ I.T.A. No.2432/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2008-09)

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आयकर अपील सं/ I.T.A. No.2433/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

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आयकर अपील सं/ I.T.A. No.2434/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

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आयकर अपील सं/ I.T.A. No.2435/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं/ I.T.A. No.2436/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Rohit Infra Projects Pvt. Ltd. A-1/103, Orchid Plaza, R. T. Road, Dahisar, Mumbai- 400068.	बनाम/ Vs.	DCIT, Central Circle-2 B Wing, Ashar, I. T. Park, Wagle Estate, Thane.
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCR4744C

(अपीलार्थी / Appellant)

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(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dharan Gandhi
Revenue by:	Shri T. Shankar (DR)

सुनवाई की तारीख / Date of Hearing:

21/12/2022



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2407/Mum/2017
A.Ys. 2007-08 to 2012-13
Rohit Infra Project Pvt. Ltd.*

घोषणा की तारीख /Date of Pronouncement: 24/12/2022

आदेश / ORDER

PER BENCH:

These are appeals preferred by the revenue as well as by the assessee against the common order dated 31.01.2017 of the Ld. Commissioner of Income Tax (Appeals)-11, Pune [in short 'Ld. CIT(A)'] for AY. 2007-08 to AY 2012-13.

2. At the outset, the Ld. AR of the assessee Shri Dharan Gandhi drew our attention to ground no. 1 for AY. 2007-08 which is as under:-

“1. The Learned Commissioner of Income Tax (Appeals) [CIT(A)] has erred in law, in facts and circumstances of the case in passing the impugned order without affording effective opportunity of hearing.”

3. Regarding ground no. 1 according to the Ld. AR, since the Ld. CIT(A)'s office was at Pune; and the appeals were listed on 15.12.2016, and since he (Ld. AR) was not well, he sought an adjournment on 14.12.16 by filing an adjournment application by post. Taking into consideration the adjournment application, the Ld. CIT(A) adjourned the appeals and re-fixed the appeals on 30.01.2017; even though according to Ld. CIT(A) he had sent notice to assessee about fixing appeals for hearing on 30.01.2017, according to him, the postal authority returned the notices back un-served with an endorsement “unclaimed/refused”. Finding no one appearing for assessee, therefore, the Ld. CIT(A) has passed the impugned order taking into consideration the written submissions. The Ld. AR contest the assertion of the Ld. CIT(A) that the notice has been returned/un-served.



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According to him, the assessee's address have not changed. And therefore there was no occasion for the postal authorities to return back such a notice. According to him, since assessee was in the dark, he could not appear before the Ld. CIT(A). And therefore, according to Ld. AR, the Ld. CIT(A) has passed the exparte order without taking into consideration, the additional evidences also filed before the Ld. CIT(A) [para no. 4 of the Ld. CIT(A)]. Therefore, the Ld. AR, submits that there has been violation of natural justice since the Ld. CIT(A) has passed the exparte order without hearing the assessee; and though has given some relief, he has more or less confirmed the high-pitched assessment, which impugned action is in clear violation of natural justice and he prays to nix the impugned order or in the alternative to give an opportunity again before the Ld. CIT(A).

4. Per contra, the Ld. CIT-DR opposing the plea of Ld. AR submitted that we should not interfere with the impugned action of Ld. CIT(A) and he does not want us to give another innings to the assessee.

5. After hearing both the parties on ground no. 1 (supra), we note that the Ld. CIT(A) has passed the impugned order for all the appeals on 31.01.2017 because the assessee/Ld. AR of the assessee did not appear before him on the last date of fixing of appeals for hearing before him i.e. 30.01.2017. According to the Ld. AR, even though the Ld. CIT(A) acknowledges that the assessee/Ld. AR had filed the adjournment application for the hearing on 15.12.2016, [by filing an adjournment on 14.12.2016], he didn't communicate the date on which



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the appeals were listed/adjourned in this case i.e, 30.01.2017. According to Ld. AR, even though the Ld. CIT(A) asserts that notice fixing the hearing date of 30.01.2017 was sent by registered post, he erred in hastily passing the impugned order (for all the seven (7) appeals) on the very next day i.e. on 31.01.2017. According to the Ld. AR, the assessee had filed paper book in response to the notice of the Ld. CIT(A) dated 14.09.2016 with an application for admission of additional evidences. And the Ld. CIT(A) had called for remand report from the AO (regarding admission of additional evidences) which Ld. CIT(A) admits that he has not received it even though the reminder was given to the AO on 21.11.2016 (para no. 4 of Ld. CIT(A) and still the Ld. CIT(A) has hurriedly passed the impugned order even without the remand report from AO on 31.01.2017. According to the Ld. AR, Shri Dharan Gandhi he was astonished to receive the impugned order of 31.01.2017, when he was ready to argue the Appeals and he wondered as to how the notice fixing the appeal for hearing on 30.01.2017, couldn't be served and according to him, there was no question of assessee not receiving the notice which was supposed to have been dispatched by registered post as asserted by the Ld. CIT(A). Be that as it may, the matter of fact is that impugned order is an ex-parte order qua assessee. It is noted that even though the assessee had filed paper book on 14.09.2016 along with additional evidences and the Ld. CIT(A) has forwarded the same to the AO vide letter dated 18.10.2016 for his views/remand report; and despite on 21.02.2016 Ld. CIT(A) reminded him (AO), no reply was received from the AO till



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the appeal was adjudicated as admitted by the Ld. CIT(A) at para no. 4 of the impugned order. Since the assessment order has been passed on 27.03.2015, the Ld. CIT(A) in the aforesaid scenario ought to have been given another opportunity to the assessee as well as AO (remand report) before passing the ex-parte order. According to us, there is per-se violation of natural justice on the part of the Ld. CIT(A). Therefore, we set aside the impugned order and restore the appeal back to the file of the Ld. CIT(A) with a direction to adjudicate the appeals after giving proper hearing to the assessee. For that we rely on the decision of the Hon'ble Supreme Court in the case of ITO Vs. M. Pirai Choda (2011) 334 ITR 262 which was followed by Hon'ble Delhi High Court in the case of CIT Vs. PC Chemicals (Delhi High Court) dated 13.09.2012 wherein their Lordship has held that if there were procedural lapses on the part of the AO while making the assessment, the proper course would be not to invalidate the assessment or delete the additions, but to remand the assessment back to the AO, so that the procedural lapses which had prejudicially affected the assessee can be set right and the assessment be completed after duly complying with the rules of natural justice which was followed also in the case of Sonal Construction (2012) 211 Taxman 167 (Del). On the ratio of the aforesaid judicial precedence cited (supra), the impugned order of Ld. CIT(A) is set aside and the appeals are restored back to Ld CIT(A)'s file and also direct him to give proper opportunity to the assessee before deciding the appeal and the Ld CIT(A) to pass a speaking order in accordance to law.



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6. Before we part, we note that before us, the Ld. AR, undertakes to appear diligently before the Ld. CIT(A) along with supporting document to substantiate its case/appeals. The following address of the assessee/Ld. AR/Email address, Phone No. etc is also given under so that assessee would not later complain that it didn't receive the notice of hearing.

(a) Address: A-1/104, Orchid Plaza,
R. T. Road, Dahisar
Mumbai-400068.

(b) M/s. AK Kochchar & Associates
601, Vatrakund Corporate Park
Vishwashwar Road, Behind Udupi Hotel
Goregaon (East), Mumbai-400063.

(c) Hitesh Jain-9833383913
(d) Email:- ca.shk.jain@gmail.com

7. In the result, all the appeals of the assessee & revenue are allowed for statistical purposes.

Order pronounced in the open court on this 24/12/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24/12/2022.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**