

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No.128 TO 132/JP/2023
निर्धारणवर्ष/Assessment Year: 2013-14 TO 2015-16, 2017-18 & 2018-19

M/s. UdaiBuildhome Pvt. Ltd. 302, Golden Sunrise Apartment, Lajpat Nagar, C-Scheme, Jaipur	बनाम Vs.	The DCIT Central Circle-2 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCU 5068 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri C.M. Agarwal, CA
राजस्व की ओरसे / Revenue by: Mrs. Meenakshi Vohara, CIT

सुनवाई की तारीख / Date of Hearing : 13/04/2023
उदघोषणा की तारीख / Date of Pronouncement: 17 /04/2023

आदेश / ORDER

PER BENCH:

These 05 appeals have been filed by the assessee against 05 different orders of the Id. CIT(A)-4,Jaipur dated 17-01-2023 for A.Y. 2013-14 and dated 16-01-2023 for A.Y.2014-15, 2015-16, 2017-18 and 2018-19 respectively. For the sake of convenience and brevity of the case, the Bench decides to dispose off these appeals through a consolidated and the grounds appeal of the A.Y. 2013-14 is reproduced as under:-

“1. That the orders passed by the Ld CIT(A) and the Assessing Officer are opposed to law, natural justice, equity, weight of evidences, probabilities, facts and circumstances of the case.

2. That the Ld CIT(A) has erred in law as well as on the facts and circumstances of the case in dismissing the appeal of the appellant and confirming in toto the absolutely illegal, arbitrary and void ab initio order of the Ld Assessing Officer.

2.1 That the Ld CIT(A) has erred in law as well as on facts and circumstances of the case in passing the impugned order without providing adequate opportunity of being heard to the appellant and in violation of the principles of natural justice.

2.2 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in passing an ex parte order without even considering the self speaking facts mentioned in the impugned assessment order itself which need no further examination of records and other documents.

3. That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not quashing the illegal Assessment order passed by the Assessing Officer without assumption of proper jurisdiction as no proper satisfaction as mandated u/s 153C of the I.T. Act was recorded by the Assessing Officer.

3.1 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in completely ignoring the fact that there was not even a semblance of satisfaction recorded by the Assessing Officer.

3.2 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in completely ignoring the fact that the Assessing Officer has not pointed out any specific Books of accounts or documents belonging to the assessee found and seized during the course of search action.

3.3 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in completely ignoring the fact that the Assessing Officer has vaguely mentioned that search action was carried out in the case of members of Kiran Fine Jewellers Group of which assessee is a member whereas, for assuming jurisdiction u/s

153C of the I.T.Act the Assessing Officer is mandated to record satisfaction about seizure of books of accounts belonging to the Assessee from "a Person" referred to in Section 153A of the Act.

3.4 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in completely ignoring the fact that the Assessing Officer has not recorded satisfaction about any seized paper belonging to the Assessee for the impugned Assessment Year.

4. That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in sustaining the absolutely illegal and arbitrary addition of Rs 92,02,500/- made by the AO u/s 69A of the Income Tax Act.

4.1 That the order of the Ld CIT(A) of confirming the addition of Rs 92,02,500/- u/s 69A suffers from gross perversity of facts and is therefore liable to be quashed.

4.2 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in recording a completely incorrect finding of fact that during the course of search at the premises of Sh Ashok Singh sale deed dated 29.11.2012 for a sum of Rs 1,23,97,500/- registered in the name of appellant M/s UdaiBuildhome Pvt Ltd was recovered.

4.3 That the Ld CIT(A) grossly erred in law as well as on facts and circumstances of the case in overlooking the findings of fact duly recorded by the Assessing Officer that the sale deed dated 29.11.2012 was registered in the name of M/s ManokamnaBuildsquare Pvt Ltd and not in the name of the assessee.

4.4 That the Ld CIT(A) grossly erred in law as well as on facts and circumstances of the case in completely overlooking the findings of fact duly admitted and recorded by the Assessing Office that the payment for purchase of alleged land which is registered in the name of M/s ManokamnaBuildsuar Pvt Ltd was also made from the Bank account of M.s ManokamnaBuildsquare Pvt Ltd.

4.5 That the Ld CIT(A) grossly erred in law as well as on facts and circumstance of the case in observing that the on money of Rs 92,02,500/- is not recorded in the Books of accounts of the assessee

when the alleged immovable property was never purchased by the assessee and is not recorded in the Books of accounts of the appellant.

4.6 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not considering that in case any money over and above the recorded value of the property was paid that was to be enquired from the legal owner of the questioned asset and adverse view, if any, can only be taken in the hands of the legal owner.

4.7 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not giving any findings on the contentions of the appellant that the alleged investment in property was never made by the appellant, the alleged property never got transferred in the name of the appellant and the alleged property is in fact registered in the name of some other person.

4.8 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in rejecting the contention of the appellant that the AO has grossly erred in invoking the provisions of section 115 BBE of the Income Tax Act.

5. That the Ld CIT(A) erred in law as well on facts and circumstances of the case in upholding the action of the Assessing Officer in arbitrarily disallowing the claim of expenses amounting to Rs 14,084/ without any basis and material to the contrary in possession of the Assessing Officer.

5.1 That the Ld CIT(A) erred in law as well as on fact and circumstances of the case in observing that no revenue from business has been declared by the assessee during the year when earning of revenue in the year is not a condition precedent to claim deduction of genuine business expenses.

The appellant craves leave of the Hon'ble Tribunal to amend or raise any other ground, cross objection, including any additional ground of appeal not set out in the appeal Memo.

2.1 The Bench noted that in all these appeals the grounds of appeal are almost same except the change in amount of addition u/s 69A, u/s 68 and other disallowances in the claim of expenses etc.

2.2 During the course of hearing, the Bench noted that the Id. CIT(A) has provided 12 opportunities on various dates i.e. 29-01-2021, 19-02-2021, 19-07-2021, 12-08-2021, 18-11-2021, 27-12-2021, 12-01-2022, 24-01-2022, 30-11-2022, 12-12-2022, 21-12-2022 and 12-01-2023 to contest the case before him but neither the assessee advanced any arguments nor appeared during the course of hearing before the Id. CIT(A) for which the Id. AR of the assessee informed the Bench that due to various reasons, the assessee could not comply with the instructions of the Id.CIT(A) or appeared before the Id.CIT(A) on the date of hearing. To this effect, one of the Director of the assessee company Shri Charan Singh has filed affidavit praying therein as under:-

1. That I am Director in the company since 20 Nov.2019
2. That appellant company suffered huge set back during the covid period and business of the appellant was in total disarray. Curcilar staff members of the appellant left the job and appellant was finding it difficult to organize the affairs.
3. That during the pendemic, my father lost his life after battling for long life in ICU on 22-01-2022.
4. That out of Five Directors, Harsh Agarwal resigned on 23-03-2016, Sandeep Sharma resigned on 20-11-2019 and Ratan Lal Agarwal resigned on 11-12-2020.

5. That company has started its business but no sale could be materialized since 2017.
6. That due to financial exigency, we tried to many consultant for resolving our Income Tax Matters, initially they agreed to prepare submissions but in absence of fund they were not ready to file and prepare reply. That no consultant is ready to give any confirmation for this because the work was not completed by them.
7. That I am sorry for inconvenience caused to Department for this delay and I assure in future I will try to keep appear on all dates in order.

It will be obnoxious to mention that one of the director of the company Shri Charan Singh Khangarot has filed the details of treatment /hospitalization of his father Shri Mukut Singh in Soni Hospital, Jaipur from the date of admission 15-01-2022 to date of discharge on 22-01-2022 who passed away on 22-01-2022 in the Hospital. The ld. AR of the assessee informed the Bench that one of the Directors wanted to attend the hearing before the ld. CIT(A) on the appointed dates but such circumstances remained beyond his control and thus the instructions/orders of the ld. CIT(A) could not be complied with. In the meantime, the ld.AR of the assessee prayed to provide one more opportunity in the interest of equity and justice to restore the matter to the file of the ld. CIT(A) for afresh hearing in connection with the above mentioned appeals.

2.3 On the other hand, the ld. DR opposed the submissions of the ld.AR of the assessee and prayed as many as 12 opportunities were given and the assessee did

not care to contest his case on merits and therefore, the appeal of the assessee is required to be dismissed as they have miserably failed to support the appeal before Ld. CIT(A). Even otherwise if the bench intends to give chance to contest the case on merit the same shall first be decided by the Ld. CIT(A) as the assessee cannot bypass the route available in the law and therefore, the appeal may be set-aside to the file of the Ld. CIT(A) with heavy cost on account of lethargic and unserious attitude of not appearing before the Ld. CIT(A) during the course of hearing.

2.4 We have heard both the parties and perused the materials available on record. From the records, we find that there were justifiable reasons for which the assessee could not appear before the Ld. CIT(A) to contest the case on the appointed dates based on the various reasons mentioned in the affidavit of the director supported by the evidence. It is also an undisputed fact that the assessee was granted several opportunities by the Ld. CIT(A) to argue the case but the assessee remained non-cooperative and negligent in pursuing its cases on the dates of hearing of the appeals for which the Bench awards cost of Rs.5,000/- on each appeal directing the assessee to deposit the same in the Prime Minister Relief Fund and copy of the same shall be submitted to the Ld. CIT(A) by the assessee for proof of this cost. Thus the appeals of the assessee are restored to the file of the Ld. CIT(A) for afresh hearing by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain

cooperative during the course of appellate proceedings before the Id. CIT(A).

Thus the appeals of the assessee are allowed for statistical purposes.

2.5 It may be mentioned that the Bench has restored the appeal of the assessee in ITA No. 128/JP/2023 for the A.Y. 2013-14 to the file of the Id.CIT(A) for afresh consideration as mentioned hereinabove and it is also not required to repeat the facts of the other appeals being almost similar issue, therefore, the decision taken by the Bench in ITA No. 128/JP/2023 for the A.Y. 2013-14 shall apply mutatis mutandis in other appeals of the assessee in ITA No. 129/JP/2023 TO 132/JP/2023.

Thus the appeals of the assessee are allowed for statistical purposes.

3.0 In the result, the above mentioned appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 17 /04/2023.

Sd/-
(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-
(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 17 /04/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Uдай Buildhone (P) Ltd. , Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-2, Jaipur .
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.128/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar