

IN THE INCOME TAX APPELLATE TRIBUNAL, PATNA BENCH, PATNA

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

ITA Nos.70 & 71/PAT/2020

Assessment Year: 2016-17

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| ACIT, Central Circle-3, Patna | vs | M/s. Tirupati Homes Limited Ground Floor, Arvina Apartment, Nageshwar Colony, Patna – 800001. PAN: AADCT 7444 H |
| (Appellant) | | (Respondent) |

Present for:

Appellant by : Shri Alok Kumar, Advocate
Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 10.05.2023

Date of Pronouncement : 25.05.2023

ORDER

PER SONJOY SARMA, JM:

The captioned appeals are filed by the revenue against two separate orders of the ld. CIT(A) – 3, Patna dated 18.06.2020 and 19.06.2020 respectively for A.Y. 2016-17. The revenue has raised the following grounds of appeal:

ITA NO. 70/Pat/2020

1. That on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 1,35,06,630/- made by the A.O. on account of undisclosed/misreporting of sale of flats, accepting the contention and calculation made by the assessee in which the main questionable point is deduction of expense of Rs.5,19,35,503/- on account of "excess provision of earlier years deducted" to complete the substantially completed units. The ld.CIT(A) has accepted this contention which was made for the first time before him, without making proper verification and verifying corresponding entry in the accounts.

2. That the Ld.CIT(A) failed to appreciate the fact that the assessee did not discharge the burden of proof on him by submitting any information or even responding to the clarification sought by the A.O. The assessee was totally non co-operating in the assessment proceedings. The Ld.CIT(A) accepted explanation provided by the assessee for the first time before him in violation of Rule 46A of the I.T. Rules. The Ld.CIT(A) even did not ask the reason for not providing explanation to the A.O. Further,

the contention raised before CIT(A) were one sided and could not be verified independently because no remand report was asked for. The assessee by not cooperating before the A.O. has avoided all the further enquiries and took the benefit providing explanation best suited to him without any further verification. The acceptance of the assessee's explanation provided for the first time before CIT(A) has made the function of A.O. as of no relevance as Ld. CIT(A) did not even obtain a report from the A.O.

3. That on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.74,39,916/- made by the A.O. on account of undisclosed rental receipt by accepting the contention of the assessee which was made for the first time before the Ld.CIT(A).

4. That the order of the Ld.CIT(A) being erroneous in law and on facts to be vacated and the order of the A.O. be restored.

5. That the applicant craves leave to add, alter, delete, modify the grounds of appeal before the Hon'ble ITAT.

ITA NO. 71/Pat/2020

1. The ld. CIT(A) has deleted the penalty on the ground that quantum additions made in the assessment order in consequence of which penalty was imposed has been deleted by the CIT(A). However, further fact is that the department is contesting the deletion of quantum addition before the Hon'ble ITAT.

2. That the appellant craves leave to add, alter, delete, modify the grounds of appeal before the Hon'ble ITAT.

2. Brief facts of the case are that the assessee is a company engaged in real estate and hotel business. The assessee has filed its return of income for the A.Y. 2016-17 declaring total income of Rs. 10,30,783/-. The case of the assessee was selected for scrutiny under CASS followed by issuance of notice u/s 143(2) & 142(1) of the Act. Subsequently, the ld. AO framed the assessment u/s 144 of the Act by determining the total income of the assessee at Rs. 2,19,77,330/-.

3. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) where the ld. CIT(A) allowed the appeal of the assessee.

4. Aggrieved by the above order, revenue has preferred the appeal before the Tribunal raising multiple grounds of appeal.

5. At the time of hearing, ld. DR brought to our notice that various additional evidences were admitted by the ld. CIT(A) from the assessee but those additional evidences were never placed before the Assessing Officer for his comments. The ld. DR further submitted that the ld. CIT(A) has erred in deleting the addition of Rs. 1,35,06,630/- made by the AO on account of undisclosed / misreporting of sale of flats by accepting the contention and calculation made by the assessee by allowing the deduction of expenses of Rs. 5,19,35,503/- on account of "excess provision of earlier years deducted" to complete substantially completed units. Besides that the ld. DR submitted that while passing the order ld. CIT(A) has erred in deleting the addition of Rs. 74,39,916/- made by the AO on account of undisclosed rental receipt by accepting the contention made by the assessee and while allowing, ld. CIT(A) did not obtain a report from the ld. AO. Therefore, the impugned order was not justified by simply admitting the various additional evidences and giving relief to the assessee even without calling for any remand report from the concerned Assessing Officer. On the other hand, ld. AR supported the decision rendered by the ld. CIT(A).

6. We have perused the case records and heard the submission made by the ld. DR and analyzed the facts and circumstances of the act, the Assessing Officer vide at para no. 3 & 4 of his order has made addition of Rs. 74,39,916/- and Rs. 1,35,06,630/- in the hands of assessee. The facts further clearly demonstrates that in the entire order of ld. CIT(A), he has not called for any remand report from the Assessing Officer. The ld. CIT(A) simply relied on the submissions and evidences furnished before him by the assessee and has given relief even without himself conducting any specific enquiry. This is an issue of assessment proceeding where the assessee avoided to appear before the Assessing Officer and at the appellate stage has provided certain additional evidences but they were also not scrutinized on the parameters of genuineness by the concerned Assessing Officer since no remand report was called for from him.

7. In our view, justice should not only be done. This way of giving relief to the assessee in a summarized and cryptic order by the ld. CIT(A) without calling for any remand report is not warranted from a quasi judicial authority. The parameters of justice demands that there should be check and carves on the practices conducted by the assessee so that the revenue is not defrauded or denied of the legible taxes which it has to receive from the assessee. Merely admission of additional evidences without giving an opportunity to the Assessing Officer to confront all these evidences without calling for remand report regarding verification of genuineness of transactions, the ld. CIT(A) has not complied with the parameters as laid down by the law.

8. In view of the above matter, we set aside the order of the Id. CIT(A) and remand the matter back to the file of AO and direct him to adjudicate the matter on the instant issues involved in the instant appeal. The assessee is directed to submit the necessary evidences before the Assessing Officer in support of its claim. The Assessing Officer should pass speaking order after verification of the facts and examine the evidences produced before him at the time of hearing. Needless to mention here that the Id. Assessing Officer shall grant reasonable opportunity of hearing to the assessee and accordingly the appeal of the revenue is allowed for statistical purposes.

9. Since we allowed the quantum of appeal being ITA No. 70/Pat/2020 filed by the revenue for statistical purposes, therefore, connected penalty proceeding in ITA No. 71/Pat/2020 filed by the revenue has no legs to stand. Consequently it becomes infructuous and we dismissed the same.

10. In the result, the appeals of the revenue in ITA No. 70/Pat/2020 is allowed for statistical purposes and ITA No. 71/Pat/2020 is dismissed.

Order pronounced in the open court on 25.05.2023

Sd/-

Sd/-

**(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata: 25.05.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: ACIT, Central Circle-3, Patna.
2. The Respondent: M/s. Tirupati Homes Limited.
3. The CIT,
4. The CIT (A)
5. The DR .

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata