

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

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 792/MUM/2023 (A.Y. 2010-11)

Mighty Constructions Pvt. Ltd., A-wing, 6 th Floor Universal Business Park Chandivali Farm Road Off Saki Vihar Road, Andheri (E) Mumbai - 400072 PAN: AADCM3581C	v.	DCIT – 10(2)(2) Room No. 209, 2 nd Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Dharmesh Shah
Department Represented by	:	Shri P.D. Chougule
Date of Conclusion of Hearing	:	25.05.2023
Date of Pronouncement	:	21.06.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 13.01.2023 for the A.Y.2010-11.

2. Assessee has raised following grounds in its appeal: -

"1. The Ld. CIT(A) has erred in law and in facts in passing the order and dismissing the appeal without granting sufficient opportunity of hearing to the appellant.

2. The Ld. CIT(A) has erred in law and in facts in confirming the addition on account of undisclosed income of Rs. 6,42,00,000/- made by the Ld. A.O.

3. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal."

3. At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A).

4. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

5. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, we find that even though the Ld.CIT(A) provided opportunity on several occasions and assessee could not appear nor complied to the notices. However, it is brought to our notice that assessee has filed request for adjournment on 26.12.2022 for two weeks. The request was filed through ITBA portal. Meantime, Ld.CIT(A) has

passed order on 13.01.2023. Considering the totality of facts and submissions of the Ld. AR and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Needless to say that the Ld.CIT(A) shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st June, 2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 21.06.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum