

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.2804/DEL/2019 & 989/DEL/2020
Assessment Years 2015-16 & 2016-17

Shree Ganpati Gold Projects Pvt. Ltd. 2633-2634, Plot No.249-250, Bank Street, Karol Bagh, New Delhi.	v.	ITO Ward-23(3) New Delhi.
TAN/PAN: AAMCS4797D		
(Appellant)		(Respondent)

Appellant by:	Shri Nirbhay Mehta, CA		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	18	09	2023
Date of pronouncement:	18	09	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Assessee against the orders of the Commissioner of Income Tax (Appeals)-VIII, New Delhi ['CIT(A)' in short] both dated 15.02.2019 and 20.01.2020 arising from the assessment orders both dated 26.12.2017 and 21.12.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16 & 2016-17 respectively.

2. The grounds of appeals raised by the assessee in both the assessment years read as under:

ITA No.2804/Del/2019 Assessment Year 2015-16

“1. That on the facts and circumstances of the case and in law the order passed by CIT (A)-8 New Delhi (hereinafter referred to as AO) is contrary to the facts and bad in law.

2. That on the facts and circumstance of the case and in law, the CIT(A) was not justified in confirming addition made by AO of Rs. 2,28,65,687/- by treating the loss incurred on sale of property as capital loss without considering the fact that the business of the assessee company is to deal in the sale, purchase, lease and development of immovable properties and thus any loss on sale of property should be considered as business loss and not a capital loss.

3. That on the facts and circumstance of the case and in law, the CIT (A) has erred in not considering the submission of the appellant company filed vide letter dated 27.12.2017 before the assessing officer.

4. That the CIT (A) has erred in law in ignoring the fact that AO had passed the alleged assessment order by erroneously considering the reply filed by the appellant on 27.12.2017 as filed on 14.12.2017 in the assessment order and passed the assessment order on 26.12.2017 without considering the reply by the appellant on 27.12.2017.

5. That the CIT(A) has erred in drawing a conclusion that on 08.01.2019 n one attended the hearing however the AR attended the hearing and filed letter for adjournment drawing an observation that no non compliance was made on the said date.”

ITA No.989/Del/2020 Assessment Year 2016-17

“1. That on the facts and circumstances of the case and in law, the order passed by CIT (A)-8, New Delhi (hereinafter referred to as CIT (A)), is contrary to the facts and bad in law.

2. That on the facts and circumstances of the case and in law, the CIT(A) was not justified in dismissing the appeal since sufficient and proper opportunity was not provided to the appellant during the course of appellate proceedings.

3. That on the facts and circumstances of the case and in law, the action of the CIT-A is not justified in upholding the action of the A in treating the business loss claimed by the appellant on sale of property amounting to Rs.4,48,52,030/- as capital loss without considering the fact that the business of the assessee company is to deal in the sale, purchase, lease and development of immovable properties.

That on the facts and circumstances of the case and in law, the action of the CIT(A) is not justified in upholding the action of AO by considering the expenses claimed on account of MCD property tax amounting to Rs.9,85,413/- as capital expenses ignoring the fact that the business of the assessee company is to deal in the sale, purchase, lease and development of immovable properties.”

ITA No.2804/Del/2019 Assessment Year 2015-16

3. When the matter was called for hearing, the ld. counsel for the assessee submitted at the outset that the additions made by the Assessing Officer amounting to Rs.2,28,65,687/- by treating the loss incurred on sale of property as capital loss.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however passed an *ex-parte* order without discussing the merits of the case solely for the reason that the assessee has failed to file responses to notices issued on several occasions as tabulated in the first appellate order.

5. To rebut the observations of the CIT(A), the ld. counsel adverted our attention to the adjournment letters filed against each notices so issued. It was contended that CIT(A) has omitted to take note of the request for adjournment and it is not a case of no reply *per se* as alleged by the CIT(A). The ld. counsel thus pleaded violation of principles of natural justice and urged for remitting the matter back for logical conclusion in the matter after considering the reply of the assessee on merits.

6. In the light of the submissions made on behalf of the assessee and on perusal of the case records, we find justification in the plea advanced on behalf of the assessee. It is noticed that the CIT(A) has issued notices for hearing on several occasions and the assessee has duly replied on all occasions and sought

adjournment. To our mind, the CIT(A) acted hurriedly without giving proper opportunity. There can be a variety of reasons for non compliance in such a short period. Having regard to the fact that assessee has duly attended before the Assessing Officer, it cannot be ordinarily presumed that assessee has willfully disobeyed the notice of hearing to its own detriment. Coupled with these, the CIT(A) has ought to be adjudicated the appeal on merits after examining the material on record. Hence, guided by the principles of objectivity, fairness and justice, we consider it just and proper to remit the matter back to the file of the CIT(A) for fresh adjudication in accordance with law after giving proper opportunity to the assessee.

7. The facts in issue in ITA No.989/Del/2020 are similar to ITA No.2804/Del/2019. Thus, the observations given shall apply *mutatis mutandis*.

8. In the result, both the captioned appeals are allowed for statistical purposes.

Order pronounced in the open Court on 18/09/2023.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: 18/09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**