

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
(Through virtual hearing)

ITA Nos.01 to 05/NAG/2022
(A.Y. 2009-10, 2011-12, 2013-14, 2014-15 & 2015-16)

M/s. Gladstone Infrastructure Pvt. Ltd., Plot No.50, First Floor, Opp. Lendra Park, Ramdaspath, Nagpur-440 010 PAN: AADCG 3830 G	vs	DCIT, Central Circle-1(1), Nagpur.
Appellant		Respondent

Assessee by	:	Shri Veena Agrawal, CA
Revenue by	:	Shri Kailash Kanojiya, DR
Date of hearing	:	27/09/2023
Date of pronouncement	:	04/10/2023

O R D E R

Per Bench:

These appeals preferred by the assessee emanates from the separate orders of Commissioner of Income Tax [Appeals]-3, Nagpur, all dated 26.10.2021 for A.Y. 2009-10, 2011-12, 2013-14, 2014-15 & 2015-16 respectively as per the grounds of appeal on record.

2. At the outset, Id. counsel for the assessee had asked for adjournment, which was rejected. Both the parties conceded that the facts and issues involved in all these matters are similar and identical and after considering the submissions, all these matters are heard and disposed of vide this consolidated order.

3. We shall take up ITA No.01/NAG/2021 as the lead case for

illustration of facts for the purpose of adjudication.

4. The relevant facts of the case, in brief, are that a search and seizure action u/sec. 132 of the Act was conducted in Bajoria -Agrawal group of cases of Nagpur on 02/12/2014, in which assessee was also covered. Notice u/sec. 153A of the Act dated 21/10/2015 was issued and served on the assessee on 23/10/2015. In response to the notice issued u/sec. 153A, assessee filed return of income on 23/12/2016 declaring total income at Rs.NIL. The Assessing Officer (AO) completed the assessment u/sec. 144 r.w.s. 153A of the Act determining the total assessed income at Rs. 2,47,25,000/- by making addition on account of unexplained cash credits u/sec. 68 of the Act amounting to Rs.2,47,25,000/-

5. That, on perusal of the order of Id. CIT(A), it is observed that the Id. CIT(A) had dismissed the appeal of the assessee for non-prosecution. The order passed is an *ex-parte* order. That, as evident from para 3 of the order of Id. CIT(A) that three opportunities were provided to the assessee. However, since there were no compliance to the hearing notices, the Id. CIT(A) had dismissed the appeal of the assessee for non-prosecution. This is a fact for all the matters before us.

6. Ld. counsel for the assessee submitted that they were unable to attend the hearing before the Id. CIT(A) for circumstances beyond their control and was not at all intentional or deliberate. That, further,

Id. counsel is willing to appear before the Id. CIT(A) with all relevant documentary evidences and represent the case on merits before him.

7. Ld.DR has no objection, if the matter is remanded to the file of the Id. CIT(A) with specific direction being given by the Bench to the assessee to comply with hearing notices.

8 As we have observed that Id. CIT(A) has not adjudicated any issue on merits in the said order, therefore, the rights and liabilities of the parties are yet to be determined substantively in this case. There have been three opportunities being given to the assessee which this Bench acknowledges and at the same time, appreciate the fact that since the tax legislation falls within the ambit of welfare legislation, therefore, whenever appropriate the assessee-taxpayer's interest should have to be protected within the ambit of the statute and more specifically, in situations where there is no loss to the Revenue. Having said that, we provide one final opportunity as last opportunity to the assessee to represent the case on merits before the Id. CIT(A) and the demand is kept alive and the assessee shall comply with all the hearing notices submitting various documents/evidences as and would be called for and represent the case on merits. The Id. CIT(A) shall adjudicate the matter as per law complying with the principles of natural justice. We order accordingly.

8.1 Before parting, we also state that even when the matter is

remanded to the file of the Id. CIT(A), there is no loss caused to the Revenue, since the demand is still alive. In view thereof, we set aside the order of the Id. CIT(A) and remand the matter back to his file as per our aforesaid directions. Grounds of appeal stands allowed for statistical purposes.

9. In the result, appeal of the assessee in ITA No.01/NAG/2021 is allowed for statistical purposes.

10. Since the issues, facts and circumstances and the treatment of all these appeals by the first appellate authority are absolutely similar and identical, therefore, our decision in ITA No.01/NAG/2022 for A.Y. 2009-10 shall apply *mutatis mutandis* to all the other appeals preferred by the assessee. The grounds of respective appeals stands allowed for statistical purposes.

11. In the result, appeals of the assessee in ITA Nos. 02-05/NAG/2022 also stands allowed for statistical purposes.

12. In the combined result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in open Court on 04th October, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 04th October, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, Nagpur Bench, Nagpur.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.