

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA Nos. 3055 to 3057/Mum/2023

(A.Ys.2010-11, 2013-14 & 2015-16)

Ajay Malshi Dedhia, 17/134, Motilal Nagar, SV Road, Goregaon (W) Maharashtra - 400104	Vs.	ACIT 31(1) Kautilya Bhavan, BKC, Maharashtra - 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACPD8829Q		
Appellant	..	Respondent

Appellant by :	Mandar Vaidya
Respondent by :	Milind Chavan

Date of Hearing	19.12.2023
Date of Pronouncement	21.12.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

All these three appeals filed by the assessee are directed against the different order of ld. CIT(A) NFAC, pertaining to assessment year 2010-11, 2013-14 & 2015-16. Since, common issue on identical facts are involved in these appeals filed by the assessee therefore, for the sake of convenience all these appeals are adjudicated together by taking ITA No. 3057/Mum/2023 as lead case and its finding will be applied mutatis mutandis to the other appeals wherever it is applicable.

2. There was a delay of 16 days in filing the appeal by the assessee. The assessee vide submission dated 22.08.2023 has requested condonation for delay in filing the appeal on the ground that employee

of his chartered accountant who were looking after the filing of appeal etc, was proceeded on long leave, therefore, there was delay in filing this appeal.

3. After hearing both the sides and perused the material on record. We consider that there is bonafide reason that marginal delay in filing the appeal by 16 days because of non-availability of the dealing person who was keeping track of filing the appeal etc, therefore the marginal delay in filing the appeal is condoned.

ITA No.3057/Mum/2023

1. Ex-parte Order

- a. *The hon. CIT(A) erred in law and on facts in passing an ex-parte order.*
- b. *The hon CIT(A) has issued notice only on 27/04/2023 in almost two years. The appellant attempted to file adjournment letter on 29/05/2023 but due to some reason was unable to do so*
- c. *Your appellant prays for the reversal of the ex-parte order passed by the hon. CIT(A)*

2. Non-Application of Mind while passing order

- a. *The hon, CIT(A) erred in law and on facts in passing the order without application of mind and considering the evidence available on record.*
- b. *The hon. CIT(A) erred in law and on facts in passing the non speaking order.*
- c. *The appellant prays that the order passed without application of mind be quashed.*

3. Invalid notice u/s 148:

- a. *The Id. A.O. erred in law and on facts in issuing a notice u/s 148.*
- b. *The hon. CIT(A) erred in law and on facts in confirming the validity of the issue of notice u/s 148*
- c. *The appellant submits that the notice issued after the expiry of four years from the end of the A.Y. 2010-11. An assessment u/s 143(3) had been completed and the appellant has disclosed truly and fully all material facts necessary for his assessment. Therefore, the notice u/s 148 is against the First Proviso to s. 147.*
- d. *The Id. A.O. had framed the wrong reasons even though all the details were available or record.*
- e. *Your appellant prays that the notice u/s 148 be treated as an invalid notice ad therefore the entire reassessment proceedings be quashed.*

4. Invalid Reassessment Proceedings;

- a. *The Id. A.O erred in law and on facts in passing assessment order u/s 143(3) r.w.s. 147 even after the appellant pointed out the defects and invalidity of notice u/s 148.*
- b. *The hon. CIT(A) erred in law and on facts in confirming the action of the Id. A.O.*
- c. *Your appellant prays that the entire reassessment proceedings be treated as invalid and illegal and therefore the reassessment order passed u/s 143(3) r.w. s 147 be quashed.*

5. Addition of Unexplained Money of Rs. 3.05,83,500;

- a. *The Id. AO erred in law and on facts in treating the amount of Rs. 3,05,83,500 as unexplained money u/s 69A and as a consequence erred in making an addition of Rs. 3,05,83,500 to the returned income.*
- b. *The hon CIT(A) erred in law and on facts in confirming an addition of Rs. 3,05,83,500 u/s 69A*
- c. *The Id. AO after applying his mind to the information provided by the DCIT Investigation Wing had arrived at the conclusion that the appellant had paid on money for purchase of TDR. No addition is made for the payment of on money. However, the id. A.O. has in the assessment made disallowance for receipt of on-money for sale of TDR.*
- d. *Your appellant prays for the deletion of the said addition of Rs. 3,05,83,500 as there is no sale of TDR.*

6. Violation of Natural Justice:

- a. *The Id AO erred in law and on facts in passing the order of assessment as:*
 - i. *He relied on the information behind the back of the appellant.*
 - ii. *He did not part with the information so collected with the appellant.*
 - iii. *He denied the opportunity to the appellant to present his case on such information.*
 - iv. *The Id. A.O. added the income without issuing proper show cause notice.*
 - v. *He did not produce Shri Akshay Doshi for examination.*
 - vi. *He did not examine the facts stated by the appellant*
 - vii. *He did not examine and refused to the overwhelming evidences produced by your appellant in support of the details called off by the Id.AO and confirming the facts stated by your appellant*

- viii. *He relied on statement of a person that was unrelated to the appellant*
 - ix. *He denied adequate opportunity of hearing to the appellant*
 - x. *He did not conduct an independent inquiry of his own,*
 - xi. *He followed the instructions of his superior instead of applying his own mind to take his independent decision*
- b. *The hon. CIT(A) erred in law and on facts in confirming the action of the Id. A.O, in passing the order in violation of the provisions of natural justice.*
- c. *Your appellant prays that an order passed in the above circumstances against the provisions of natural justice be held to be bad in law and be quashed.”*

4. Fact in brief is that return of income declaring total income at Rs.137,15,327/- filed on 15.10.2010. In this case assessment u/s 143(3) of the Act was completed on 25.03.2013 determining the total income at Rs.141,37,890/-.

5. Subsequently, information was received from DGIT, Central Circle-6(2), Mumbai that a search and seizure action was conducted u/s 132 of the Income Tax Act, 1961 in the case of M/s Ekta & Bhoomi Group by unit-3 Investigation Wing, Mumbai. During the course of search action incriminating data of M/s Bhoomi Group has been found which was related to cash transactions executed by the M/s Bhoomi Group with different parties. As per the data found and seized transaction of sale of TDR has been entered in different financial year and cash has been paid by M/s Bhoomi Group. As per the information received the assessee Shri Ajay M. Dedhia was one of the person related to the cash transactions of Rs.305,83,500/- during the F.Y. 2009-10 relevant to the assessment year 2010-11. During the course of assessment proceedings the assessing officer issued show cause notice to the assessee to explain why the transaction of cash of Rs.305,83,500/- should not be treated as unexplained cash credit and added to the total income. However, no reply to the show cause notice was received by the assessing officer. Therefore, the assessing officer stated that assessee

could not establish that he has not received the cash amount on sale of TDR to Bhoomi Group. Consequently, the amount of Rs. 305,83,500/- was added as unexplained money u/s 69A of the Act to the total income of the assessee.

6. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee sustaining the addition on the basis of reason provided by the assessing officer holding that in spite of issuing a number of notices the assessee has not made any compliance at the time of appellate proceedings before the ld. CIT(A).

7. During the course of appellate proceedings before us the ld. Counsel submitted that ld. CIT(A) has not considered the adjournment request filed by the assessee from time to time and requested that more opportunity of hearing be extended to the assessee at the level of ld. CIT(A) for adjudicating the case of the assessee on merit.

On the other hand, the ld. D.R contended that in spite of giving a number of opportunity the assessee has not made any compliance before the ld. CIT(A) without any reason and supported the order of lower authorities.

8. Heard both the sides and perused the material on record. Assessment u/s 143(3) r.w.s 147 of the Act in the case of the assessee was finalized on 27.12.2017 as discussed supra in this order. The assessing officer has added the amount and Rs.305,83,500/- as unexplained money u/s 69A of the Act on the basis of information received pertaining to search and seizure action conducted in the case of M/s Ekta & Bhoomi Group by the Investigation Wing, Mumbai that assessee had received cash on sale of TDR to M/s Bhoomi Group. After perusal of the material on record it is undisputed fact that neither the assessee has responded to the show cause notice issued by the assessing officer nor made any compliance before the ld. CIT(A) during

the course of appellate proceedings. The detail of opportunity extended by the ld. CIT(A) to the assessee as referred supra in the order of ld. CIT(A) is as follows:

<i>Date of hearing notice</i>	<i>Time limit for furnishing written submission</i>	<i>Remarks</i>
14.02.2020	20.02.2020	Adjournment requested
22.02.2021	09.03.2021	No reply
31.08.2021	15.09.2021	No reply
24.05.2023	30.05.2023	No reply
31.05.2023	12.06.2023	No reply

The ld. Counsel submitted that more opportunity of hearing be granted for deciding the appeal of the assessee on merit at the level of ld. CIT(A). We consider that it would serve the end of justice if opportunity of hearing is granted to the assessee for disposing the appeal of the assessee u/s 250 of the Act before the first appellate authority. However, considering the fact that assessee has not made appropriate compliance before the ld. CIT(A) in spite of extending number of opportunities as referred above in this order it would be appropriate that the assessee shall deposit Rs.5000 for each appeal totaling to Rs.15,000/- being cost for wasting precious time and resources of the Income Tax authorities for non-compliance. Therefore, assessee is directed to deposit the challan of payment of cost of Rs.15,000/- within 3 week of this order with the Income Tax Department. Subject to the aforesaid terms the case of the assessee is remanded back to the ld. CIT(A) for adjudication on merit after providing fair and reasonable opportunity to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

ITA No. 3055/Mum/2023

9. Similar to the facts and issue as discussed while adjudicating the appeal of the assessee vide ITA No. 3057/Mum/2023 this appeal of the assessee was also dismissed by the ld. CIT(A) because of not making any

compliance from the side of the assessee. Applying the finding of ITA No. 3057/Mum/2023 as mutatis mutandis to this appeal of the assessee we restore this case of the assessee to the CIT(A) for deciding on merit, after providing opportunity to the assessee for the reason as discussed supra. Accordingly, this appeal of the assessee is also allowed for statistical purposes.

ITA No.3056/Mum/2023

10. Similar to the facts and issue as discussed while adjudicating the appeal of the assessee vide ITA No. 3057/Mum/2023 this appeal of the assessee was also dismissed by the ld. CIT(A) because of not making any compliance from the side of the assessee. Applying the finding of ITA No. 3057/Mum/2023 as mutatis mutandis to this appeal of the assessee we restore this case of the assessee to the CIT(A) for deciding on merit, after providing opportunity to the assessee for the reason as discussed supra. Accordingly, this appeal of the assessee is also allowed for statistical purposes.

11. In the result, all these three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21.12.2023

Sd/-

(Vikas Awasthy)
Judicial Member

Place: Mumbai

Date 21.12.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.