

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER &**

**ITA No.3289/Mum/2023  
(Assessment Year: 2012-13)**

V City Builders and Developers LLP, 10 Jayambbe Co-op HSG Soc Ltd, 3 <sup>rd</sup> Liberty Garden X Lane, Malad (W), Mumbai-400064.	<b>बनाम/ Vs.</b>	ITO-30(3)(5), Kautilya Bhavan, BKC, Bandra (E), Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJFV3123C</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	None
Revenue by :	Shri Ujjwalkumar Chavhan Sr. DR

सुनवाई की तारीख / Date of Hearing	31/01/2024
घोषणा की तारीख /Date of Pronouncement	01/02/2024

आदेश / ORDER

**PER PAVAN KUMAR GADALE - JM:**

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT(A) passed u/sec143(3) r.w.s 147 and 250 of the Act. The assessee has raised the following grounds of appeal:

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 on 30/12/2022. The appellant filed adjournment letter on 10/01/2023 vide acknowledgement no. 917507191100123.*

c) *The hon CIT(A) erred in passing the order without rejecting the adjournment request of the appellant.*

d) *The hon. CIT(A) erred in not considering the adjournment request of the appellant and not giving fresh opportunity by issuing another notice.*

e) *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 Reopening:*

a) *The Learned Assessing Officer erred in law and on facts in issuing the notice u/s 148 of I.T Act.*

b) *The learned Assessing Officer has issued invalid notice U/s. 148 and the entire proceedings u/s 148 is non est.*

c) *The Learnd Assessing Officer erred in law and on facts in unsatisfactorily disposing the objections of your appellant against the reasons for reopening.*

d) *The hon, CIT(A) erred in law and on facts in confirming the actions of the Id. A.O.*

*e) Your appellant prays that the notice u/s 148 be treated as an invalid notice and therefore the entire reassessment proceedings be quashed,*

*Invalid Assessment:*

*a) The Id. AO erred in law and on facts in passing the order of assessment as:*

*i. He relied on information behind the back of the appellant.*

*ii. He in the process denied the opportunity to the appellant to present his case on such information.*

*iii. He relied on statement of a party that was unrelated to the lenders.*

*iv. He did not take in to consideration the retraction of the above referred party.*

*v. He did not produce party for examination.*

*b) The hon. CIT(A) erred in law and on facts in confirming the actions of the Id. A.O.*

*c) Your appellant prays that the entire assessment be considered bad in law and be quashed.*

*5. Non furnishing the required evidences called for by your appellant:*

*a) The learned Assessing Officer erred in law and on facts in not furnishing the requisite evidences enabling your appellant to defend himself & leading to logical conclusion.*

*b) The hon. CIT(A) erred in law and on facts in confirming the actions of the Id. A.O. and not directing the Id. A.O. to provide the tangible material to the appellant.*

*c) Your appellant prays that, without furnishing all requisite evidences and reasonable time for due verification, no addition should have been made and the same be deleted.*

*6. Violation of Natural Justice:*

*a) The Id. A.O. erred in law in violating the provisions of natural justice as follows:*

*i. He did not produce the lenders for examination before relying on 3rd party statement in assessment.*

*ii. He did not examine the bankers of the appellant, lenders or the AO of the lenders.*

*iii. He did not examine and refused to the overwhelming evidences produced by appellant in support of the genuineness of loans.*

*iv. He commenced an inquiry only at fag end of the assessment period.*

*v. He denied adequate opportunity to appellant.*

*b) The hon. CIT(A) erred in law and on facts in confirming the order passed by the Id. A.O. in violation of natural justice. The hon. CIT(A) also erred in law and on facts that the adjournments were taken only for the CA being busy. The hon. CIT(A) erred in law and on facts in not appreciating the fact that the appellant was in the process of appointing another council, which was even appointed well before receipt of the order of the Hon. CIT(A)*

*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.*

*7 Addition of Unsecured Loan of Rs. 1,15,00,000:*

*a) The Id. AO erred in law and on facts in treating the unsecured loans as unexplained cash credit u/s. 68 and added Rs. 1,15,00,000.*

*b) The hon. CIT(A) erred in law and on facts in confirming the addition u/s 68.*

*c) Your appellant submits that he had obtained unsecured loans in course of his business by account payee cheques from persons with credibility and had fully discharged the onus cast on him, he had failed to provide various information and records relating to third party in his possession and he had failed in discharging the burden on him while making the addition.*

*d) Your appellant prays for the deletion of addition of Rs. 1,15,00,000/-.*

*8. Disallowance of Interest of Rs. 4,51,166/-:*

*a) The Id. AO erred in law and on facts in disallowing the claim of interest of Rs. 4, 51,166/- being interest paid on the above loans.*

*b) He had not issued any show cause notice for disallowance of interest.*

*c) The hon. CIT(A) erred in law and on facts in confirming the disallowance of interest expense.*

*d) Your appellant submits that the interest was paid by account payee cheques after deducting tax at source to lenders whose identity, genuineness and credibility were established and the complete details were furnished which was taxed in the hands of the lenders by the Income Tax Department.*

*e) Your appellant prays that the said interest of Rs. 4,51,166/- be allowed as claimed.*

*9. Assessment of Total Income:*

*a) The Id AO erred in law and on facts in assessing the total income at Rs. 1,19,51,170 against the returned total loss of Rs. 14,231 and in the process erred in making an addition of Rs.*

*1,19,51,170 disregarding loss of Rs. 14,231 to the returned total income.*

*b) The hon. CIT(A) has erred in law and on facts in confirming the assessment of total income by the Id. A.O.*

*c) Your appellant submits that the appellant had determined the total loss of Rs. 14,231 as per the provisions of the Income Tax Act, 1961 and as per the Accounting Standards issued by the ICAI.*

*d) Your appellant pleads that the returned total loss of Rs. 14,231 be accepted and addition of Rs. 1,19,51,170 be deleted.*

*10. Initiation of penalty proceedings u/s.271(1)(c):*

*a) The Learned Assessing Officer erred in law and on facts in initiating of penalty proceedings u/s. 271(1)(c) without mentioning default, when there is no default.*

*b) Further the Learned Assessing Officer has erred in law and on facts in not clearly stating on which additions the penalty proceedings are initiated & by not clearly mentioning whether penalty proceedings are for concealment of income or filing of inaccurate particulars of income.*

*c) The hon. CIT(A) erred in law and on facts in confirming the initiation of penalty proceedings u/s 271(1)(c).*

*d) Your appellant prays to drop the penalty proceedings as wrongly initiated.*

*11. Prayer for Leave:*

*Your appellant prays for the leave to add amend, alter, delete or modify any of the above grounds.*

2. The brief facts of the case are that, the assessee is engaged in the business as builders and developers. The assessee has filed the return of income for the A.Y 2011-12

on 29.09.2012 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. The Assessing Officer (AO) has received information from DGIT (Inv), Mumbai that the assessee is a beneficiary of the accommodation entries and therefore the AO has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. In compliance to the notice u/sec 148 of the Act, the assessee has filed a letter dated 23.07.2015 requesting for reasons for re-opening of assessment and the assessee were provided reasons vide letter dated 19.10.2015. The assessee has filed objections vide letter dated 24.11.2015 and the AO has dealt on the facts, objections raised by the assessee and were disposed off. The AO has dealt on Loan transactions of the assessee with the parties, modus operandi and the statements recorded and the submissions. Finally the AO was not satisfied with the explanations and information and made addition of Loan as non genuine U/sec 68 of the Act of Rs.1,15,00,000/- and similarly disallowed the aggregate interest payment to the parties of Rs.4,51,166/- and assessed the total income of Rs.1,19,51,170/- and passed order u/sec 143(3) r.w.s 147 of the Act dated 22-03-2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO

and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. Heard the Ld. DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing fixed on 09.02.2021, 18.10.2021, 05.10.2022, 30.11.2022 & 09.01.2023 referred at Page 2 Para 2 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and

information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

5. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 01.02.2024.

Sd/-

**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated 01/02/2024

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumba