

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI BR BASKARAN, AM AND
SHRI SANDEEP SINGH KARHAIL, JM**

ITA No.7458 & 7459/Mum/2013
(Assessment Year:2003-04 & 2004-05)

Ganesh Atmaram Mokalsh Flat No. 6/2B Dhanraj complex, Near Ashok Theatre, Pimpri, Pune – 411 017	Vs.	Deputy Commissioner of Income Tax, Cen Cir 39, Mumbai
PAN/GIR No.ARQPM0739F		
(Assessee)	:	(Respondent)

Assessee by	:	ShriPrayag Jha
Respondent by	:	ShriManoj Kumar Singh, Sr. AR

Date of Hearing	:	27.02.2024
Date of Pronouncement	:	27.02.2024

ORDER

Per BR BASKARAN, AM :

Both of the appeals filed by the assessee are directed against the orders passed by the Learned Commissioner of Income Tax (Appeals)-36, Mumbai ('Ld. CIT(A)' for short) and they relate to the Assessment Years ('A.Y.' for short) 2003-04 and 2004-05. The assessee is aggrieved by the decision of the CIT(Appeals) in dismissing the appeals filed for both years ex-parte, without hearing the assessee.

2. Both these appeals were earlier disposed of by the Tribunal, vide its common order dated 29.7.2017. Subsequently the above said common order was recalled in

the order dated 04-01-2024 passed against the miscellaneous applications filed by the assessee in M A Nos.300 & 301/Mum/2021.

3. The Learned Counsel appearing for the assessee submitted that the assessee was acting as a land aggregator for and on behalf of M/s. Jai Corp group. The above said group was subjected to search operations u/s. 132 of the Act on 5.2.2009 and the assessee was also covered in that search action. Consequent thereto, notices u/s. 153A of the Income Tax Act was issued to the assessee for both the years under consideration. Since the assessee did not cooperate with the Assessing Officer, he completed the assessment by determining total income of Rs.6,04,352/- and Rs. 7,64,816/- respectively in A.Ys 2003-04 and 2004-05. The Assessing Officer has made the above said addition in both years by estimating the income of the assessee and also assessing the credits found in the bank accounts of the assessee.

4. The assessee challenged the assessment orders passed for both the years by filing appeals before the Ld. CIT(A). Since the assessee did not appear before the Ld. CIT(A), he dismissed the appeals of the assessee confirming the assessments made by the Assessing Officer in both years. Aggrieved, the assessee has filed these two appeals before the Tribunal.

5. The Learned Authorised Representative ('the Ld. AR' in short) submitted that the income estimated by the AO is very much on the higher side and is not based on any material. He submitted that he was acting on behalf of Jai Corp group only and did not earn income to that extent. Further the credits found in the bank account could also be explained by the assessee. Accordingly he prayed that the assessee may be provided with one more opportunity to present his case properly before the Assessing Officer in both the years.

6. We heard the Learned Departmental Representative ('the Ld. DR'in short) and he did not oppose to the prayer put forth by the Ld. AR.

7. Having regard to the submissions made by the Ld. AR and also considering the facts of the case, we are of the view that, in the interest of Justice, the assessee may be provided with one more opportunity to present his case properly before the Assessing Officer. Accordingly, we set aside the orders passed by the CIT(A) in both the years under consideration and restore all the issues to the files of the AO for passing the order afresh. After affording adequate opportunity of being heard to the assessee, the Assessing officer may take appropriate decision in accordance with the law.

8. In the result, both the appeals filed by the assessee are treated as allowed for statistical purpose.

Order pronounced in the open court on 27.02.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

Sd/-
(BR BASKARAN)
Accountant Member

Mumbai; Dated : 27.02.2023

Mini, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai