

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
MS PADMAVATHY S, ACCOUNTANT MEMBER

ITA. No. 4487/MUM/2023  
(A.Y.2012-13)

Bhoomivikas Construction Pvt Ltd, No.13/870, Sukhshanti, Gokhale Road, No.2, Dadar West, Mumbai-400028.	Vs .	ITO-Ward 992)(1), Room No.506, 5 <sup>th</sup> Flr, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. AAACB6031F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Ajay.R. Singh & Shri Akshay Pawar.AR
Revenue by	Shri Laxmi Kant.Sr. DR

सुनवाई की तारीख/Date of Hearing	07.05.2024
घोषणा की तारीख/Date of Pronouncement	10.05.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre, Delhi, (NFAC)/ CIT(A) against the order u/s 143(3) r.w.s 147 and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

*I. Addition of Rs. 30,49,000 cash deposits:*

1. *The learned CIT (A) erred in passing exparte order confirming the addition of Rs. 30,49,000/- being cash deposits in the Bank A/c No. 006100100101804 at Saraswat Co-op Bank at Dadar branch, without appreciating that the opening cash balance as on 01/04/2011 was Rs. 14.25 lacs and total withdrawal during the year was Rs. 34.65 lacs, therefore cash deposits was out of cash on hand, duly from accounted cash balance available with the*

2. *The learned CIT (A) failed to consider bank book and cash book filed alongwith the appeal memo on 17/01/2020, therefore exparte order passed confirming the addition is unjustified.*

II. *Addition of Rs. 1.21,00,000/-*

3. *The Id CIT(A) erred in passing exparte order confirming aggregate addition of Rs. 1,21,00,000/- being cheques deposited in bank A/c without appreciating that amount of Rs. 1 crs. was received from Sai Siddhant Realtors Pvt. Ltd. (PAN No: AABCF2732J) during the relevant F.Y.: 2011-12, (by cheques on 02/05/2011-Rs. 50,00,000/- 18/05/2011- Rs. 25,00,000/- & 20/05/2011- Rs. 25,00,000/-) whereas Rs. 21 lacs was received from Jeevan Sundar Property Developers (LLP) (Pan No. AAACJ1744P) in previous F.Y.: 2010- 11.*

4. *The Id CIT(A) erred in confirming the addition without appreciating that the one of the party i.e. Sai Siddhant Realtors Pvt. Ltd was active as per MCA site portal whereas the amount received from other party i.e. Jeevan Sundar Property Developers LLP was not pertaining to the relevant year, therefore addition u/s 68 of the Act is not justified.*

*5. The Assessee company consisted of two directors during the relevant AY namely Shri Harshavadan J Bandiwadekar aged 65 years and Smt Mugdha Harshavadan Bandiwadekar age 58 years, due to age factor and due to the accountant Shri. Naresh Bagadia aged 68 years left the employment on or around January 2020, both directors being not aware of new faceless appeal proceeding inadvertently failed to pursue the matter, therefore one more opportunity may be provided*

*6. Reopening of assessment is bad in law.*

*7. The Assessee craves leave to add, alter modify or delete one or more ground before or at the time of hearing of Appeal.*

2. The brief facts of the case are that, the assessee company is engaged in the business as builders and property and developers. The Assessing Officer (AO) has received the information (ITS) that the assessee has made cash transactions exceeding Rs.10 lakhs in the F.Y.2011-12 and the assessee has not filed the return of income for A.y.2012-13. Whereas the AO has reason to believe that the income has escaped assessment and issued notice u/sec148 of the Act. Further the A.O has issued notice U/sec 142(1) of the Act but there was no compliance by the assessee. The AO has issued notice u/sec 133(6) of the Act to Kotak Mahindra bank, HDFC Bank and Saraswat Co-op where the assessee has maintained the bank accounts. Subsequently The AO has received the bank statement from the banks and found that the assessee has made cash deposits of Rs.30,49,000/- and credit entries of

Rs.1,21,00,000/- all aggregating to Rs. 1,51,49,000/- in Saraswat Co-op bank in the F.Y 2011-12 and the AO has issued a show cause notice to explain the sources along with the supporting evidences. Since there was no compliance by the assessee, the AO has considered the information available on record and has made a addition of Rs.1,51,49,000/- treating as unexplained cash credit u/sec68 of the Act and similarly the A.O has denied the claim of loss of Rs. 4,77,566/-.Finally the A.O has assessed the total income of Rs.1,51,49,000/- and passed the order u/sec 143 r.w.s 147 of the Act dated 11.12.2019.

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. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information of the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences in support of deposits in the bank account and prayed for

an opportunity to explain before the lower authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the rival 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 on 18-02-2020, 23-12-2020, 20-12-2022 & 9-10-2023 referred at Page 2 Para 1.3 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 addition of deposits in the bank account and denial of claim of loss by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we 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, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 10.05.2024.

Sd-  
( **PADMAVATHY S** )  
**ACCOUNTANT MEMBER**  
Mumbai, Dated:10/05/2024

KRK.PS

Sd/-  
(**PAVAN KUMAR GADALE**)  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,

Mumbai