

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

ITA Nos.358 & 359/Mum/2024 (AYs 2014-15 & 2015-16)

Bright Builders & Developers A/122, Ashok Niwas Shop No. 2, Ardshir Dadi St. Mumbai 400004	vs.	Income Tax Officer 19(1)(2) Matru Mandir, 2 nd Floor Tardeo Road Mumbai 400007
PAN/GIR No. : AAIFB6759M		
Appellant	..	Respondent

Appellant by :	----- None -----
Respondent by :	Shri Sunil Shinde, Sr. A.R.

Date of Hearing	13.05.2024
Date of Pronouncement	13.05.2024

आदेश / O R D E R

PER OM PRAKASH KANT, AM:

These two appeals by the assessee are directed against two separate orders both dated 30.11.2023, passed by the Id. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi (in short ‘the Id. CIT(A) for AYs 2014-15 and 2015-16, respectively. The facts and circumstances and grounds raised in the appeals being identical, the same were heard together and disposed off by way of this consolidated order for convenience.

2. Despite notifying, neither any one attended on behalf of the assessee nor any adjournment was sought during hearing of the case. In

the circumstances, the appeals were heard ex-parte qua the assessee after taking into consideration the arguments of the ld. D.R.

3. At the outset the ld. D.R. brought to our notice that these appeals have been adjudicated by the ld. CIT(A) in view of non compliance of various notices issued. The relevant finding of the ld. CIT(A) in AY 2014-15 is reproduced as under:

“5.1 I have carefully gone through the records and facts of the case. The appellant is a firm engaged in the business of Builders and Property Developers. The Appellant filed his return of income for the previous year relevant to the assessment year 2014- 15 on 29.11.2014 declaring total income at Rs. 5,37,610/-. The return filed by the Appellant was processed and accepted under the provisions of section 143(1) of the Act. Subsequently, the case was selected for scrutiny.

5.2 Notice of hearing was issued to the appellant 21.02.2020, 02.03.2020, 17.03.2020 and 23.12.2020 to file written submissions by 02.03.2020, 09.03.2020, 31.03.2020 and 30.12.2020. The appellant has requested for grant of fresh date of hearing vide response dated on 01.09.2021. Subsequently, notice of hearing was issued to the appellant 19.07.2023, 08.08.2023 & 01.11.2023 to file written submissions by 28.07.2023, 14.08.2023 & 16.11.2023. The appellant failed to file any submission and the appellant did not respond on any of the notices. Therefore, the appeal is disposed of on the basis of material available on record, facts on record and position of law. In view of repeated ignorance of the notices, it was clear that the appellant was not interested in pursuing the appeal.

5.3 In this case, several notices have been issued to the appellant. The appellant failed to file any submission in response of notices issued from time to time. By repeated non compliance and not filing any written submission, the appellant has shown that he is not interested in pursuing the appeal. In view of these facts, I have no alternative but to dismiss the appeal of the appellant for non-prosecution as it cannot be kept pending adjudication for indefinite period. It is the duty of the appellant to make necessary arrangements for affective representation on the appointed date. Mere filing of an appeal is not enough, rather it

requires effective prosecution also. Therefore, the appeal is found liable for dismissal. This view is supported by the following judicial pronouncements:-

- (i) CIT vs Multiplan India Ltd. 38 ITD 320(Del)*
- (ii) Estate of Late Tukojirao Holkar vs. CWT 223 ITR 480 (M.P.)*
- (iii) New Diwan Oil Mills vs. CIT (2008) 296 ITR 495 (P&H)*
- (iv) CIT vs. B. N. Bhatachargee And Another 118 ITR 461 (SC).*

5.4 The Hon'ble ITAT, Jabalpur Bench, Jabalpur in the case of M/s Bindra Warehousing Corporation, Itarsi vs ITO, ITA No. 153/Jab/2016 and in Jabalpur Sahkari Dugdh Sangh vs ITO, ITA No. 201 to 203/Jab/2015 has found assessee as not interested in pursuing appeal on the basis of just one non-attendance before the Hon'ble Tribunal. The Tribunal has dismissed appeals for non submission. The Tribunal has held as follows-

"At the time of hearing, none appeared on behalf of the assessee. The notice of hearing was sent to the assessee through RPAD, but there was no compliance on behalf of the assessee. Even no application seeking adjournment was filed. The laws aid those who are vigilant, not those who sleep upon their rights. This principle is embodied in well known dictum "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUBVENIUN".

Under these circumstances, in our considered opinion assessee is not interest in prosecuting the appeal. As such we hold that this appeal is liable to be dismissed for non-submission."

5.5 Respectfully, following the view taken in the cases cited at para-5.4 above and the decision of Hon'ble ITAT, Jabalpur Bench, Jabalpur in the cases cited (supra), the appeal filed by the appellants is liable for dismissal for non-submission

5.6 However, in the interest of justice, the appeal is decided based on the material available on record. The A.O has noted that the valuation of stamp duty authority exceeds the consideration received by the assessee amounting to Rs. 63,11,780/- which squarely falls within the ambit of provision of section 43CA of the act. For the sake of convenience, section 43CA is reproduced herein under:

".....(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value

adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).....”

*5.7 The A.O's decision has been made after considering information on record and after giving more than reasonable opportunity to the appellant for explaining why the difference between the value adopted by stamp valuation authority and the actual sale consideration amounting to Rs. 63,11,780/- should not be disallowed u/s 43CA of the Income Tax Act, 1961. The assessment order does not call for any interference. In view of the above discussion, the addition made by the AO on these grounds amounting to Rs.63,11,780/- is **Confirmed**. The appeal on **Ground No. 1 & 2 is dismissed.**”*

4. We have observed that various notices issued by the ld. CIT(A) were not complied with by the assessee. However, we find that the issue in dispute in the appeal is relating to the difference in value of properties recorded by stamp value duty authorities and the value recorded in the agreement for transfer of the property by the seller (i.e. assessee) and purchaser, which has been added by the AO u/s. 43CA of the Income Tax Act, 1961 (in short ‘the Act’), and further sustained by the ld. CIT(A). In the statement of facts filed before the ld. CIT(A), it is submitted on behalf of the assessee that for the purpose of computing profit and gains of business, the assessee has already taken into consideration in its books of account the sale consideration equivalent to the stamp duty valuation , therefore no further disallowance was required to be made u/s. 43CA of the Act. We note that the ld. CIT(A) has not taken into consideration this submission of the assessee , probably looking to due

to non-compliance on the part of the assessee. Thus, prima facie the issue in dispute appears to be in favour of the assessee, but due to non compliance of notices by the assessee, the Ld CIT(A) has decided the issue against the assessee. Therefore, in the interest of substantial justice, we feel it appropriate to set aside the findings of the ld. CIT(A) and restore the matter back for deciding afresh after taking into consideration the submission of the of the assessee and verifying the same with documentary evidences.

5. The facts and circumstances in assessment year 2015-16 are also identical where the submissions of the assessee have not been considered due to non compliance on the part of the assessee. Following our finding in AY 2014-15, the finding of the ld. CIT(A) in AY 2015-16 is also set aside and the matter is restored back for deciding afresh.

6. The Grounds raised by the assessee in AYs 2014-15 and 2015-16 are accordingly allowed for statistical purposes.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 13.05.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

Sd/-
(OM PRAKASH KANT)
Accountant Member

Place: Mumbai
Date: 13.05.2024
n.p

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण/ **ITAT, Bench, Mumbai.**