

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 173/Mum/2024
(Assessment year : 2013-14)**

M/s Shree Siddhi Developers Through Partners:- 1) Shri Jagdish Raje and 2) Shri Dilip Kudalkar, 12, 1 st Floor, Sudama Tower, Behind Kasturi Plaza, Manpada Road, Dombivli East, 421 201 PAN : ABAFS6170N	vs	Commissioner of Income-tax (Appeals), NFAC, Delhi
APPELLANT		RESPONDENT

Assessee by : Ms. Ridhisha Jain – CA & Karan Jain
Ad vocate
Respondent by : Shri Dinesh A Chourasia – Sr. AR
Date of hearing : 29/05/2024
Date of pronouncement : 30/ 05/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2013-14, date of order 17.11.2023. The impugned order was emanated from the order of the

Ld.Assistant Commissioner of Income-tax, Circle 20(3), Mumbai (in short, 'the Id. A.O.') passed under section 144of the Act date of order18/03/2016.

2. The assessee has taken the following grounds of appeal:-

"The ground or grounds of appeal are without prejudice to one another.

1. On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred passing an ex parte order and in dismissing the Appeal filed by the Appellant without passing a speaking order on the grounds raised by the Appellant.

The Appellant submits that the Appellate Order passed by the CIT (A) is in gross violation of principles of natural justice and prays the said order be set aside and the Appeal may be decided on the merits of the case.

2. On the facts and in the circumstances of the case and in law, Hon'ble CIT (A), erred in confirming the order u/s. 144 passed by the Ld. AO.

The Appellant submits that the Hon'ble CIT(A) ought to have held that the order u/s. 144 passed by the Ld. AO suffered from serious infirmities, was without jurisdiction, bad in law and void ab intio and ought to have quashed the said order.

3. On the facts and in the circumstances of the case and in law, Hon'ble CIT (A) erred in confirming the addition of Rs. 1,35,77,803 on account of the alleged income declared under survey.

The Appellant submits that the Hon'ble CIT(A) ought to have held that the said addition of Rs. 1,35,77,803 made by the Ld. AO was incorrect and invalid and ought to have deleted the said addition.

4. On the facts and in the circumstances of the case and in law, H'ble CIT (A) ' erred in confirming the addition of Rs.1,35,77,803 on account of the alleged income declared under survey.

The Appellant Submits that the Hon'ble CIT(A) ought to have held that the said addition of Rs 1,35,77,803/- made by the Adjudicating Assessing Officer was incorrect and invalid on the basis of the payment chart mentioned by the Ld. Assessing Officer in the Page No 2 of the Assessment Order.

5. On the facts and in the circumstances of the case and in law, HTDle CIT (A) erred in confirming the addition of Rs. 1,35,77,803 on account of the alleged income declared under survey.

The Appellant Submits that the H'ble CIT(A) ought to have held that the said addition of Rs 1,35,77,803/- made by the Adjudicating Assessing Officer was incorrect and invalid on the basis of the fact that the total expenditures for the year under consideration was of Rs 92,02,578/- which comprises i) Cost of Material Rs 73,874/-;

ii) Manufacturing Expenses Rs 95,441/-; iii) Administration Expenses Rs 31,26,367/-;
iv) Financial Expenses Rs 58,01,475/-; v) Depreciation Rs 1,05,421/-.

6. On the facts and in the circumstances of the case and in law, H'ble CIT (A), erred in confirming the addition of Rs. 75,50,000 u/s. 68 on account of alleged Unsecured Loans.

The Appellant submits that the H'ble CIT (A) ought to have held that the said addition of Rs. 75,50,000 made by the Ld. AO was incorrect and invalid and ought to have deleted the said addition.

7. On the facts and in the circumstances of the case and in law, H'ble CIT (A) erred in confirming the disallowance of Rs. 8,60,973 u/s. 43B on account of alleged unpaid interest on Loans taken from Scheduled Bank.

The Appellant submits that the H'ble CIT (A) ought to have held that the said disallowance of Rs. 8,60,973 made by the Ld. AO was incorrect and invalid and ought to have deleted the said disallowance.

8. On the facts and in the circumstances of the case and in law, H'ble CIT erred in confirming the addition of Rs. 60,164 on account of divide received from the co-operative Bank.

The Appellant submits that the H'ble CIT (A) ought to have held that the said addition of Rs. 60,164 made by the Ld. AO was incorrect and invalid and ought to have deleted the said disallowance.”

3. Brief fact of the case is that survey was conducted in assessee's premises and assessee declared the income related to cash payment amount to Rs.1,35,77,803/- during the survey proceedings. The return was filed but the amount which was declared during the survey proceedings was duly adjusted and the income was declared as Nil in return of income (in short ROI). The assessment proceedings were conducted. The Ld.Assessing Officer added back the entire amount of Rs.1,35,77,803/- with unsecured loan to the tune of Rs.75,50,000/- and addition under section 43B for payment of interest to scheduled banks amount to Rs.8,60,973/- and the dividend income received from co-operative bank on shares amount to Rs.60,164/- were also added in assessment proceeding. The total amount is worked out to Rs.2,20,48,940/- which is calculated as net taxable income in the assessment. The aggrieved assessee filed an appeal before the

CIT(A). The Ld.CIT(A) passed an ex parte speaking order and upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR appeared and argued that the appeal was passed ex parte and assessee has not got a reasonable opportunity to submit its documents before the CIT(A). In absence of the assessee's submissions and prayer, the appeal order was passed ex parte against the assessee. The Ld.AR prayed to set aside the matter to the file of Ld.CIT(A) for further adjudication.

5. The Ld.DR argued but had not made any strong objection against the submission of the Ld.AR.

6. We heard the rival submissions and considered the documents available in the record. The Ld.CIT(A) has passed an ex parte order, but the assessee was allowed a reasonable opportunity of hearing before the CIT(A). The relevant paragraph of the appeal order at para 5.1 is reproduced below: -

“5.1 The appeal was filed by the assessee on 22.04.2016 against order u/s 144 of the Act dated 18.03.2016 for the AY: 2013-14. In connection to the appeal, opportunities were provided to the assessee to substantiate his grounds of appeal on following dates:

<i>S.No.</i>	<i>Date of Hearing</i>	<i>Dates of hearing (s)</i>
<i>1</i>	<i>12.10.2023</i>	<i>9.10.2023</i>
<i>2</i>	<i>26.10.2023</i>	<i>03.11.2023</i>
<i>3</i>	<i>08.11.2023</i>	<i>16.11.2023</i>

On verification of the ITBA portal, it is observed that all the above mentioned hearing notices got delivered to emails: ssd1408@yahoo.in, haresh_nanda7@yahoo.co.in & jagdishraje_24@yahoo.co.in successfully. Against all these notices, assessee is not interested in filing any details during the appellate proceedings and avail the opportunity under the principle of natural justice. In response to the notices issued, even adjournment was not sought. In such situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal.”

7. We find that the assessee has huge demand, and both the assessment and appeal orders are passed exparte. Hence, we are of the view that, in the interest of natural justice that assessee may be given one more opportunity to represent its case properly before the Id. CIT(A). Since the assessee is not able to provide satisfactory explanation about noncompliance of notices issued by the Id. CIT(A), we are of the view that the assessee should be imposed a cost in order to make him understand the importance of income tax proceedings. Accordingly, we impose the cost amount to Rs.5,000/- (Rupees five thousand only) upon the assessee which shall be paid to the credit of Income Tax Department within two months from the date of receipt of this order.

Subject to the payment of above cost which shall be verified by the Id. CIT(A). All the issues are restored to the file of the Id. CIT(A) for adjudicating the case on merits. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Id. CIT(A). Needless to say, the assessee should get reasonable opportunity of hearing. The assessee should be diligent in appeal proceeding for expeditious disposal of appeal.

8. In the result, appeal of the assessee bearing **ITA No.173/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 30th day of May, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/05/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai