

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA Nos.408 to 414/Del/2024

[Assessment Years: 2014-15, 2016-17 to 2020-21 and 2015-16]

Gardenia India Limited, Shop No.61, 2 nd Floor, Shiv Arcade, Acharya Niketan, Mayur Vihar, Phase-I, East Dealhi, Delhi-110091	Vs	DCIT Central Circle-19, Aayakar Bhawan, Jhandewalan, New Delhi-110055
PAN-AACCG7503M		
Assessee		Revenue

Assessee by	Sh. Ranjan Chopra, CA
Revenue by	Sh. T. James Singson CIT-DR

Date of Hearing	19.06.2024
Date of Pronouncement	19.06.2024

ORDER

PER BENCH,

This bunch of seven appeals filed by the same assessee are against the respective orders of the Ld. CIT(A)-27, all dated 09.01.2024, New Delhi, pertaining to Assessment Years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 respectively.

2. Since, the issues are common and connected, hence, the appeals were heard together and are being consolidated and disposed of by this common order.

3. For the sake of reference, we are referring to grounds of appeal raised in ITA No.408/Del/2024, for Assessment Year 2014-15, the same reads as under:-

“1. The order passed by the Ld. CIT (A) is bad in law, wrong on facts and against the principles of natural justice

2. The Ld. CIT(A) has erred in passing an order u/s 250 of the Income Tax Act, 1961 ex-parte on the grounds that no response was received from the appellant company during appellate proceedings. The Ld. CIT(A) has failed to appreciate that due to continued losses the Accountant of the appellant had left his job and therefore the notices sent by email were not received by the appellant company and no physical notices were received by the appellant company at the address provided in Form No. 35

3. The Ld. CIT(A) has erred in confirming the addition of Rs. 10,70,21,736/- made by the Ld AO to the returned income of the appellant company.

4. The Ld. CIT(A) has erred in confirming the additions made through proceedings u/s 153C in the case of the appellant company pursuant to the alleged search conducted by the Income Tax Department at the premises of Sh. Yogesh Gupta and others wherein two cash receipts of Rs.2.5 Lacs each were found evidencing cash received by the appellant from Mr. Mukesh Gupta and Mr. Rajeev Gupta. The aforesaid cash receipts were duly recorded in the books of accounts of the appellant and there was no incriminating evidence record/documents found against the appellant company and the proceedings initiated u/s 153C of the Income Tax Act are bad in law.

5. The Ld. CIT(A) has erred in confirming an addition of Rs. 10,70,21,736/- to the returned income of the appellant company without appreciating the fact that the case of the appellant company was earlier assessed u/s 143(3) of the Income Tax Act vide order dated 01/06/2016 when all the relevant documents and details were duly filed before the Ld. AO who passed the order after making minor additions of Rs.8,33,500/- u/s 14A of the Income Tax Act. The Ld CIT(A) has failed to appreciate the judicial pronouncement of the Honourable Delhi High Court in the case of Commissioner of Income-tax (Central) III v. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi)(2015) | 234 Taxman 300 (Delhi)/ [2016] 380 TR 573 (Delhi)/[2015] 281 CTR 45 (Delhi)[28-08-2015] wherein it has been held that where the case of the appellant company has already been assessed u/s 143(3) of the Income Tax Act, 1961 then the completed assessment can be interfered by the Assessing Officer only on the basis of some incriminating evidence unearthed during the course of search, whereas in the case of the appellant, no incriminating evidence whatsoever was found during search proceedings.

6. The Ld. CIT(A) has erred in confirming an addition of Rs.10,70,21,736/- u/s 153C/ 144 of the Income Tax Act, 1961, made by the Ld. AO by assuming a gross profit rate of 8% on total sales made by the appellant company without providing any deduction for indirect expenses whereas the Ld. AO has not even provided the basis for considering the gross profit Rate of 8%.

7. The Ld. CIT(A) has erred in confirming the interest u/s 234A / 234B / 234C at Rs.3,71,72,253/-.”

4. At the time of hearing, the ld. AR referring to ground no.2 of the appeal submitted before us that the impugned order passed by the Ld. CIT(A) is admittedly as *ex-parte* one. It is further submitted that the notices of hearing were issued by the Ld. CIT(A) but the assessee could not appear to represent its case due to the fact that due to continued losses the Accountant of the assessee had left his job and therefore the notices sent by email were not received by the assessee company and no physical notices were received by the assessee company at the address provided in Form No.35. Further, he submitted that the office of the assessee company was sealed by Real Estate Regulatory Authority (RERA) due to which the assessee company did not have access to its books of accounts and therefore the necessary details could not be filed before the AO. Under these circumstances, he humbly prayed for further opportunity of being heard by the authorities below for adjudication of the matter in its proper perspective. Such prayer made by the ld. AR has not been objected by the Ld. DR.

5. Having heard both the parties and having regard to the facts and the circumstances of the case, we find that though the assessee was given opportunities of being heard by the ld. CIT(A), for the reasons as stated above, the assessee failed to represent its case. Therefore, in order to subserve the interests of natural justice and to

provide an opportunity to the assessee to effectively represent its case, the order of learned CIT(A) is set aside and the matter is restored to the file of the ld. CIT(A) for adjudication of the same afresh. The Ld. CIT(A) will also grant a reasonable opportunity of being heard before deciding the appeal of the assessee. Grounds are allowed for statistical purposes.

6. Ground no.2 raised in ITA Nos.409/Del/2024, 410/Del/2024, 411/Del/2024, 412/Del/2024 and 414/Del/2024 is identical to ground no.2 of ITA No.408/Del/2024 in as much as that the Ld. CIT(A) decided these appeals *ex-parte* on similar facts and circumstances. Therefore, for the same reasons, our above decision would apply *mutatis-mutandis* to all the appeals of the assessee.

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

Order pronounced in the open court on 19th June, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Dated 19.06.2024.

SJK

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,