

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2808/M/2024  
Assessment Year: 2011-12**

<b>Shri Arun Damji Gada,</b> 403, God Gift, Adarsh Dugdhalaya Lane, Adrash Nagar, Malad West, Mumbai – 400 067 <b>PAN: AABPG3923F</b>	Vs.	<b>Joint Commissioner of Income Tax,</b> Range-24(1), Income Tax Office, Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai - 400051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Subhash Chhajed, C.A.  
Revenue by : Shri Manoj Kumar Sinha, Sr. DR.

Date of Hearing : 22 . 07 .2024  
Date of Pronouncement : 21 . 08 .2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 21.03.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

**2.** In the instant case, the Assessing Officer (AO) vide order dated 18.03.2014 u/s 143(3) of the Act has made various additions on account of disallowances by determining the total income of the Assessee at Rs.3,29,88,520/- instead of income declared to the tune of Rs.1,77,57,631/- by filing its return of income on 29.09.2011 by the Assessee.

**3.** The Assessee, being aggrieved, challenged the additions/disallowances before the Ld. Commissioner, however, in spite of sending five notices, made no compliance and also not submitted any reply/documents and consequently failed to substantiate the flowing main ground raised before the Ld. Commissioner:

*“3. The Assessee has been following project completion method in respect of all his ongoing projects of construction and development in all his proprietary concerns viz. Nova Nirman Nigam, Divya Development, Nova Space and Nova Estate. There were only two ongoing projects called Divya Durga AND Divya Parshwa in the proprietary concern M/s Divya Development, which were partially completed to the extent of 50% and 30% respectively. The Assessee had capitalised all the related construction expenses under the head "Construction and Development Expenses" in the books of accounts.”*

**4.** Admittedly, in this case, the assessment order was passed on 18.03.2014 and appeal against the same was filed on 22.04.2014 before the Ld. Commissioner, whereas the same was taken into consideration by issuing notice on 12.08.2016, thereafter, after five years i.e. on 08.02.2021, thereafter after

one and a half year i.e. on 31.10.2022 and thereafter on 05.12.2023 & on 15.02.2024. The Assessee therefore before us claimed that on 12.08.2016, the Assessee remained unattended in the absence of intimation of issuance of notice on registered mail ID and thereafter on 08.02.2021 as there was complete lockdown due to Covid-19 pandemic in the Nation, therefore the Assessee made no compliance/could not attend on account of travel restrictions and thereafter on 31.10.2022 the communication was not qua notice of hearing u/s 250 of the Act but it was just the intimation for enabling the communication window. Thereafter on 05.12.202, the Assessee did not receive any notice on registered mail ID and thereafter another notice was issued on 15.02.2024 asking the Assessee to respond on 22.02.2024. In response the Assessee by filing an adjournment application online on ITBA portal, had sought for an adjournment up to 08.03.2024 on the pretext that the Assessee is gathering the material. The Assessee further submitted that though with the help of professional, the detailed written statements were prepared by 11.03.2024; however, as the window for submission of the details/documents was closed on ITBA portal, hence the Assessee was unable to upload the submissions/documents. The Ld. Commissioner without considering the request of the Assessee for adjournment, vide impugned order dated 21.03.2024 decided the appeal of the Assessee as ex-parte and consequently affirmed the additions/disallowances made by the AO. It is admitted fact that the Ld. Commissioner has not decided the issues on merits but affirmed the same without going into the details of the same, hence, the Assessee may be allowed an opportunity by considering this case as an exception.

**5.** On the contrary, the Ld. D.R. refuted the claim of the Assessee.

**6.** We have heard the parties and perused the material available on record. The reasons stated by the Assessee for non-appearance and seeking adjournment on 22.02.2024 prima-facie seems to be probable cause and/or reasonable. The Assessee has submitted various documents before us in order to substantiate his case, however, as the same were not produced before the Ld. Commissioner as the ITBA window subsequently was closed as alleged. Consequently in the absence of relevant reply and documents, the Ld. Commissioner was unable to decide the issue involved in its right perspective and proper manner and therefore for the just decision of the case and fair-play and substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate his claim.

**6.** We also direct the Assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essentially required by the Ld. Commissioner for proper and just adjudication of the case. We clarify that in case of further default the Assessee shall not be entitled for any leniency.

**7.** Thus, the case is remanded to the file of Ld. Commissioner accordingly.

**8.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 21.08.2024.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.