

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri Pavan Kumar Gadale (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 2730/Mum/2024 (A.Y. 2021-13)

Sadguru Buildcon Private Limited 101/B, Eastern Court Tejpal Road, Vile Parle (East), Mumbai-400057. PAN : AAICS0832R (Appellant)	Vs.	The CIT(A) Ward 11(1)(3) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Vijay Mehta
Department by	Shri Ashok Kumar Ambastha
Date of Hearing	26.08.2024
Date of Pronouncement	28.08.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above cited case, the learned Assessing Officer (Ld. AO for short) made two additions – first one relates to cessation of liability under section 41(1) of the Income Tax Act (the Act for short) and the second one being certain accrued interest income on dale of flat. Both the additions were made by the Ld. AO as the appellant did not give replies to the queries raised by him while completing assessment under section 143(3) of the Act.

2. Aggrieved by the additions made by the Ld. AO, the appellant filed an appeal before the learned Commissioner of Income Tax (Appeals) (the Ld. CIT(A) for short). The Ld. CIT(A) dismissed the appeal of the appellant by adjudicating that the appellant has not responded to four hearing notices sent by him. The Ld. CIT(A) has confirmed the additions made by the Ld. AO

as he found that there is no infirmity in the additions made in the assessment order.

3. As there is no relief on the additions made by Ld. AO, with the order of the Ld. CIT(A), the appellant has instituted an appeal before the ITAT with following grounds of appeal :

1. The Hon'ble CIT (A) erred in law and facts by passing the order on merit i.e. based on material available on record without appreciating that the Appellant had duly replied to notices dated 16 February 2024 and 23 February 2024 by filing a detailed response which have not been considered and the Appeal order incorrectly states that the above dated notices were not complied with.

2. The Hon'ble CIT (A) has also erred by stating in the order that opportunity of being heard was provided vide notices dated 23 September 2023 and 6 October 2023, whereas, neither such record of the said notice being issued is available on the income tax portal nor the same has been physically received by the Appellant.

3. The Hon'ble CIT(A) erred in law and facts in confirming the addition of sundry creditors on account of cessation of liability under section 41(1) of the Act amounting to Rs. 13,55,595/- to the total income of the Appellant. The provisions of section 41(1) of the Act are not applicable to the Appellant as no benefit has been accrued to the Appellant by way of remission or cessation. The liability has not ceased as the amounts were outstanding and had not been written off in the books.

4. The Hon'ble CIT (A) has erred in law and facts by confirming the higher addition under section 41(1) of the Act as the balance of sundry creditors on 31 March 2012 was Rs.13,05,597/- and not Rs. 13,55,595/-.

5. The Hon'ble CIT (A) has erred in law and facts by confirming the addition of interest amounting to Rs. 51,86,020/- accrued from outstanding amount for sale of a flat without appreciating the facts of the case that the said income is purely notional in nature and has never accrued or realised by the Appellant.

6. The Hon'ble CIT (A) erred in law and facts by passing the order on merit i.e. based on material available on record. However, he has not even refuted any facts stated by the Appellant and already on record and has purely relied on the Assessment order without any application of mind.

7. The Appellant craves leave to add, amend, alter and/or delete any of the grounds of appeal before or during the course of appeal.

8. The Appellant reserves to submit any documents or evidences that may be required to substantiate its claims.
4. On the date of hearing before the Bench, Mr. Vijay Mehta, Ld. AR of the appellant has filed a paper book to demonstrate that the first two notices mentioned by the Ld. CIT(A) were not received by the appellant and as far as subsequent two notices dated 16.2.2024 and 23.2.2004 are concerned, the appellant has filed the detailed responses. But the same were not considered by the Ld. CIT(A). Ld. AR of the appellant has filed screen shot from Income Tax Portal furnishing submissions made before the Ld. CIT(A) alongwith annexure to prove that the appellant furnished detailed submission before the Ld. CIT(A). But unfortunately, both the replies uploaded by the appellant company were not perused by the Ld. CIT(A) and hence wrongly adjudicated the issues by saying that the appellant has not responded to the notices sent by him. As copies of the submissions filed alongwith proof of uploading were filed before the Bench, we are of the opinion that the appellant responded to the notices sent by the Ld. CIT(A), with full details and the same were not taken into consideration while passing the order.
5. Per contra, Ld. DR supported the orders of lower authorities.
6. In view of the above, matter is remitted back to the file of the Ld. CIT(A) with the direction to consider all the explanations given by the appellant and pass a fresh order on merits.
7. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 28th August, 2024.

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 28.08.2024

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai