

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.1288/Mum/2024
(Assessment Year :2014-15)**

Arham Anmol Projects Private Limited H.No.1133, Ground Floor, Arham Logiparc NH-3, Nashik Highway Village Valshind Bhiwandi-421 302	Vs.	DCIT, Circle-1 Kalyan
PAN/GIR No.AAGCA9644P		
(Appellant)	..	(Respondent)

Assessee by	Shri Subhash Bains
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	28/08/2024
Date of Pronouncement	29/08/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 25/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.144 for the A.Y.2014-15.

2. Before us assessee has challenged the validity of assessment order passed u/s.147 r.w.s. 144 and the

determination of total income of Rs. 5,49,53,627/-. From the perusal of the impugned order it is seen that both the assessment order as well as CIT (A) order has been passed *exparte* for the reason that assessee could not comply with the notices sent through e-mail on ITBA portal. Before us Id. Counsel has filed very detailed and exhaustive paper book and detailed submissions and he submitted that assessee was going through various investigation by agencies, litigations before the Court and has narrated the entire sequence of events as why assessee could not appear before the authorities below and submitted that there was genuine and bonafide reasons for non-appearance. For the sake of ready reference, the following reasons have been cited before us.

“The appellant would like to state the facts of this case viz a viz grounds of appeal taken before highest fact finding authority, Hon'ble ITAT, MUMBAI for Appeal e-Filed on 20/03/2024. Respectfully, It is submitted that the Mr. Vinod Malde along with Mr. Sushil Bothra, being the promoter and director, had formed and registered appellant company. Mr. Sushil Bothra represented before the appellant that he will acquire grants on certain land and get the said land transferred in the name of the appellant company. On representation of Mr. Sushil Bothra, warehouses were constructed on the said land and the sale proceeds received w.r.t. the warehouses were deposited in the bank account of the appellant company. The appellant company, Mr. Vinod Malde as well as Mr. Sushil Bothra got engulfed in various litigations for construction on land without permission of MMRDA. Mr. Sushil Bothra deliberately neglected the proceedings initiated against the appellant company and the onus was placed on the Mr. Vinod Malde to represent the appellant company. Further, search was carried out by the Sales Tax authorities at the office of the appellant company and the residence of the directors and a huge demand was raised on the appellant company. Further, demolition notice was received from officers of MIDC directing to demolish the

construction on the said land and the construction was partially demolished on various dates. A Writ Petition before the Hon'ble Bombay High Court and stay order was passed granting stay to Mr. Vinod Malde, director of the appellant company. Further, Mr. Sushil Bothra started filing civil and criminal suits against other directors, family members of the director and accountant of the appellant company on refusal of appellant company to allot shares to partners of Mr. Sushil Bothra against the Articles of Association of the appellant company. That a police complaint was filed against Mr. Sushil Bothra for stealing of documents of the appellant company and CCTV footage was submitted. Further, Mr Sushil Bothra filed petition before Company Law Board against the appellant company and Mr. Vinod Malde. An order was passed by the Company Law Board recording the statement of Mr. Vinod Malde and directed him to maintain status quo in respect of immovable assets in the appellant company. Further, Mr. Sushil Bothra lodged a written complaint with Bhiwandi Taluka Police Station for various offences punishable under the Indian Penal Code which was later on transferred to Economic Offences Wing, Thane for further investigation. Various summons were issued to Mr. Vinod Malde as well as other persons for investigation. However, even after thorough investigation lasting for 5 months by the Economic Offences Wing, nothing untoward was found with respect the Mr. Vinod Malde. Further, anticipatory bail was granted to him. Mr. Sushil Bothra and one party filed for cancellation of application of anticipatory bail granted to Mr. Vinod Malde. Summons was also issued by Local Crime Branch and statement of various persons including Mr Vinod Malde was recorded. The bank accounts of Mr. Vinod Malde as well as the appellant company were frozen by the police authorities rendering the appellant to become incapable to pay its dues. Also, Mr. Sushil Bothra again filed a company application before the National Company Law Tribunal seeking declaration and injunction against Mr. Vinod Malde. The various on-going litigations and complaints are being handled by the Mr. Vinod Malde and he is solely looking after the appellant company affairs and attending the various proceedings initiated against the appellant company. The appellant company has major pending liabilities towards the warehouse buyers, outstanding payments to various contractors and employees, statutory liabilities etc. The appellant company as well as Mr. Vinod Malde has not been able to hire tax

consultant/representative for responding to various notices issued by the Assessing Officer due to incapacity to pay them. In this backdrop, the evidences which were not submitted before lower authorities are being enclosed hereinunder with the request to admit the same for delivering justice to the appellant. The impugned assessment order for AY 2014-15 is issued u/s 144 of Income Tax Act 1961, which may be noted.

3. Even before the ld. CIT (A) also assessee could not appear for the same reasons. Ld. CIT (A) has dismissed the assessee's appeal for want of prosecution.

4. After considering the aforesaid circumstances and in the interest of substantial justice, we deem fit that the entire issue should be remanded back to the file of the ld. AO and all the relevant documents which have been filed before us which are in the form of additional evidences are also remanded back to the file of the ld. AO to be examined afresh all the contentions including legal and on merits after giving due opportunity of the hearing to the assessee. Assessee is also directed to comply with the notices and substantiate its case before him. Accordingly, the appeal of the assessee is allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 29th August,2024.

Sd/-

(RENU JAUHRI)

ACCOUNTANT MEMBER

Mumbai; Dated 29/08/2024

KARUNA, sr.ps

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai