

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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.2738 & 2741/MUM/2024
(A.Y.2012-13 &A.Y.2016-17)

M/s.Sailee Developers Pvt Ltd, A7004,Prathamesh Horizon,New MHB Colony, Gorai, Borivali(west), Mumbai-400091.	Vs.	DCIT-Circle-13(2)(2), Aayakar Bhavan, M.K.road, Mumbai-400020.
PAN/GIR No. AAHCS0854Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri.Poojan Mehta.AR
Revenue by	Shri.Ashok Kumar Ambastha.Sr.DR

सुनवाई की तारीख/Date of Hearing	05.09.2024
घोषणा की तारीख/Date of Pronouncement	06.09.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

These are the two appeals filed by the assessee against separate orders of commissioner of Income Tax Appeal NFAC Delhi/CIT(A) (i) passed u/sec144 r.w.s147 and u/sec 250 of the Act and (ii) u/sec 143(3) and u/sec 250 of the Income Tax Act.

2. At the time of hearing, the Ld.AR submitted that there is a delay in filing the appeals before the Hon'ble

Tribunal and the assessee has filed an application/affidavit for condonation of delay. Whereas, the facts mentioned are reasonable and the Ld.DR has no specific objections. Accordingly, we condone the delay and admit the appeals.

3. Since the issues involved in these two appeals are common and identical, hence are clubbed, heard and a consolidated order is passed. The assessee has raised the grounds of appeal challenging the ex-parte order of the NFAC/CIT(A) passed under section 250 of the Act for A.Y.2012-13 & A.Y.2016-17. For the sake of convenience, we shall take up ITA No. 2738/Mum/2024 as lead case and the facts narrated.

4. The brief facts of the case are that, the assessee company is engaged in the business. The assessee has filed the return of income on 30/09/2012 for the A.Y.2012-13. Whereas the Assessing Officer (A.O) as per NMS has received information that the assessee has made certain cash transactions with the bank. Therefore, the Assessing Officer has reasons to believe that the income has escaped the assessment and issued notice u/sec 148 of the Act and there was no compliance. Further the AO has issued notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire and there was no proper compliance. The A.O has also issued the notice u/sec 133(6) of the Act on the bank and obtained the bank statement. Whereas the A.O has issued show cause notice to explain the sources of cash deposits and the other

credit eateries in the bank account and was not complied by the assessee. Therefore, the AO considering the information on record has invoked the provisions u/sec 144 of the Act and made best judgment assessment with the addition of cash deposits as unexplained credits u/sec68 of the Act of Rs.1,45,39,000/- and the A.O has estimated profit @8% on total credits which works out to Rs.2,49,96,366/- u/sec69A of the Act and assessed the total income of Rs.3,95,37,370/-and passed the order u/sec144 r.w.s147 of the Act dated 27.12.2019.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the Assessment Order and has issued notice of hearing on various dates and since there was no compliance by the assessee to notice. Therefore, the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts of the assessment proceedings. Further the Ld.AR emphasized that the assessee has good case on merits with supporting evidences which goes to roots of the case and play a vital role in the decision making and prayed for an

opportunity to substantiate before the lower authorities. Per Contra, the Ld. DR relied on the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no proper compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information subject to payment of cost of Rs. 5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate

opportunity of hearing and shall cooperate in submitting the information for early disposal of the Appeal. And we allow the grounds of appeal of the assessee for statistical purposes.

ITA No. 2741/Mum/2024.

8. As the facts and circumstances in this appeal that, the CIT(A) has passed an ex parte order and is identical to ITA No 2738/Mum/2024, Hence the decision rendered in above paragraphs would apply mutatis mutandis for this appeal also subject to payment of cost of Rs. 5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

9. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 06.09.2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 06/09/2024

KRK

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//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai