

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2734/Mum/2024
Assessment Year: 2017-18

Kalpeshwara Builders & Developers Shop No. 2, Hariom Apt. Nr. Chopra Court Opp. Wellness Medical Ulhasnagar, Thane Maharashtra - 421003 [PAN: AAHFK5653Q]	Vs	ACIT, Circle-1, Kalyan
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Bhadresh Doshi, C.A.
Revenue by :	Shri Suhas Dabade, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 23/10/2024
घोषणा की तारीख /Date of Pronouncement: 23/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 31/03/2024 passed by NFAC [hereinafter 'ld. CIT(A)], Delhi pertaining to AY 2017-18.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in dismissing the appeal without admitting the additional evidence and further erred in confirming the addition of Rs.75,98,465/- representing alleged estimated profits @5% of the closing value of work in progress.

3. Briefly stated, the facts of the case are that the assessment was framed u/s 144 of the Act vide order dated 08/12/2019 wherein the returned Nil income of the assessee was assessed at Rs.4,43,86,400/-.

4. The *ex-parte* assessment was challenged before the Id. CIT(A) wherein the assessee furnished certain evidence which were not accepted by the Id. CIT(A) who was of the firm belief that the assessee without filing any application for the admission of additional evidence relied upon the evidence. The appeal of the assessee was dismissed and the additions made by the AO were sustained.

5. We have given a thoughtful consideration the orders of the authorities below. It is true that the assessee did not avail the opportunity given by the AO and the AO, to avoid the period of limitation passed the assessment order *ex-parte* u/s 144 of the Act. It is equally true that the assessee before the Id. First Appellate Authority has furnished documentary evidence in support of its appeal, but the same were not accepted by the Id. CIT(A) on the technical ground that no proper application was made by the assessee.

6. We are of the considered view that the Id. CIT(A) ought to have accepted the evidence and decided the appeal accordingly. Therefore, in the interest of justice and fair play, we deem it fit to restore the appeal to the file of the AO. The assessee is directed to attend the assessment proceedings and comply with the queries and the AO is directed to decide the issues afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

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

Order pronounced in the Court on 23rd October, 2024 at Mumbai.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 23/10/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai