

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

**BEFORE: SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 5440/MUM/2024
(Assessment Year : 2012-13)**

Mystical Constructions Private Limited A 603 AI Akbar Building, P E Road Momin Nagar, Jogeshwari West, 400102.	Vs.	DCIT Circle 5(2)(1) Aayakar Bhawan, 400020.
PAN/GIR No. AACCN5191N		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri. Rajeev Kumar Sahu, CIT DR.
Date of Hearing	26/11/2024
Date of Pronouncement	28/11/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 19.08.2024 passed in Appeal no. CIT (A) 10, Mumbai-10239/2018-19 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2012-13, wherein the assessee's appeal against the assessment order dated 26.12.2018 has been dismissed.

2. The background of the appeal depicts that the appellant e-filed the return of income for A.Y. 2012-13 on 29.09.2012, declaring taxable income at nil and claimed current year loss of Rs. 15,49,338/-. The same was processed u/s. 143(1) of the Act. The assessment completed u/s. 143(3) of the Act on 25.03.2015 and an addition of Rs. 1,90,20,119/- was made on account of disallowance of interest. on the basis of the information received from DCIT- Central Circle-6(2) the search and seizure operation u/s. 132 of the Act was conducted at the premises of Smt. Vasumati B Mody and loose papers were seized, containing information that the assessee has given undertaking to Mr. Dijesh Doshi towards cash loan of Rs. 4.5 crores received by the assessee during F.Y. 2011-12. Further, loose paper also contained information showing that the assessee has given undertaking to Mr. Samir Deliwala towards cash loan of Rs. 65,00,000/- received by the assessee during F.Y. 2012-13. Further the information was received that statement on oath was recorded on Shri Akshay J Doshi by DDIT (Inv.) U-3(4), Mumbai u/s. 131 of the Act on 28.12.2015 in the case of M/s. Bhoomi Shashtwat Estate Pvt. Ltd. and other associated concerns, wherein Shri Akshay J Doshi has accepted that assessee has taken various cash entries amounting to Rs. 7,50,00,000/- from various concern of Bhoomi Group. During the assessment proceedings, assessee

denied the contention of the revenue department. However, learned assessing officer, was not satisfied with the assessee's response and added Rs. 7,50,00,000/- on account of accommodation entries and Rs. 5,15,00,000/- (4.5 crores + 65 lakhs) on account of cash loan. Aggrieved, assessee preferred an appeal against the assessment order before learned CIT(A), who dismissed assessee's first appeal.

3. Appellant assessee has preferred this appeal on the ground that learned CIT(A) has erred in confirming the assessment order, ignoring the fact that the assessing officer ought to have mandatorily invoked section 153C instead of section 147 of the Act.
4. None responded for the assessee. Heard learned DR and perused the records.
5. Learned DR submitted that the assessee did not appear before learned CIT(A) despite various opportunities afforded to him. Prayed to uphold the impugned order.
6. We notice that the assessee did not respond to the various notices issued by the first appellate authority on seven different occasions. Learned CIT(A) was thus compelled to pass ex-parte impugned order. The non-co-operating conduct of the assessee cannot be appreciated. However, in the interest of justice and fair play, we deem it just and appropriate to afford an opportunity to the assessee and remit the matter back to the file of learned CIT(A) for adjudication on merits afresh. We direct the assessee to be diligent and cooperative in attending the hearings and making

submissions before the learned CIT(A) for the expeditious and effective disposal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable circumstances. Needless to say, that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observation in respect of the merits of the case. The appeal is liable to be allowed accordingly.

7. In the result, the appeal is allowed in above terms for statistical purposes. The ex-parte impugned order dated 19.08.2024 is set aside.

Order pronounced on 28.11.2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 28/11/2024
Anandi Nambi, *Steno*

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