

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VP AND
SHRI GIRISH AGRAWAL, AM**

ITA Nos. 5574 to 5580/Mum/2024
(Assessment Years: 2014-15 to 2020-21)

Birla Gold and Precious Metals Limited 202-B, 2 nd Floor, Morya Landmark-II, Morya Landmark-2, New Link Road, Andheri (W), Mumbai-400 053	Vs.	DCIT Central 7(4) Room No. 636, 6 th Floor, Prathista Bhavan, Old CGO Building, M.K. Road, Mumbai-400 020
PAN/GIR No. AAECA 2444 H		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Gopal Ram Sharma
Respondent by	:	Shri Kailash C. Kanojiya

Date of Hearing	:	11.12.2024
Date of Pronouncement	:	19.12.2024

ORDER

Per Bench:

The captioned appeals by the same assessee, arise out of separate orders of learned Commissioner of Income Tax (Appeals)-49, Mumbai (‘ld.CIT(A) for short), pertaining to assessment years (A.Ys.) 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

2. Before we proceed to deal with the specific issue raised before us at the time of hearing, it is necessary to briefly deal with the facts leading to filing of present appeals.

3. Briefly stated, assessee is a resident corporate entity. The assessee, in regular course, had filed its return of income in terms of section 139 of the Act, wherever such returns were due. Subsequently, on 09.07.2019, a search and seizure operation was

carried out in case of the assessee and other group entities. As a result of such search and seizure operation carried out u/s. 132 of the Act, proceedings u/s. 153A of the Act were initiated against the assessee in respect of A.Ys. 2014-15 to 2019-20. Assessment Year 2020-21, being the year of search, regular assessment proceedings were initiated. Be that as it may, in response to notice issued u/s. 142(1) of the Act in course of assessment proceedings, the assessee furnished certain details called for.

4. However, as observed by the Assessing Officer (AO), the assessee did not fully comply with the queries raised and made compliance in a selective manner. Ultimately, the A.O. proceeded to complete assessments u/s. 143(3) r.w.s. 153A of the Act, making certain adjustments to the computation of income/loss.

5. Against the assessment orders so passed, the assessee preferred appeals before learned first appellate authority. However, as alleged by learned first appellate authority, the assessee never came forward for hearing of the appeals, but kept on seeking repeated adjournments. Even, on the date of final opportunity given to the assessee to represent its case, the assessee again sought adjournment. Rejecting assessee's request for adjournment, learned first appellate authority proceeded to dispose of the appeals *ex parte*. While doing so, he confirmed the additions/disallowances made by the A.O. in all the assessment years under dispute.

6. Before us, the Id. Counsel appearing for the assessee submitted that, in course of assessment proceeding, the assessee did comply to various queries raised by the A.O. He submitted, without calling upon the assessee to furnish further details, in case they

were required, the A.O. proceeded to complete the assessments making additions/disallowances. Of course, the Id. Counsel for the assessee fairly submitted that no representation was made before learned first appellate authority. Without prejudice, the Id. Counsel appearing for the assessee submitted that due to unavoidable circumstances, the assessee could not appear before learned first appellate authority and was prevented from furnishing supporting evidences to justify deletion of disallowances/additions made by A.O. He submitted, in A.Ys. 2014-15 to 2017-18, no assessments were pending before the A.O. on the date of search. Therefore, these are unabated assessments. Hence, additions/disallowances, if any, can only be made based on incriminating materials found as a result of search. Whereas, he submitted, the additions/disallowance made by the A.O. are not with reference to any incriminating material found as a result of search. He submitted, due to *ex parte* disposal of the appeals, the assessee could not fairly establish this aspect before learned first appellate authority. He submitted, now the assessee is filing additional grounds as well as additional evidences to establish its claim, on the preliminary issue that the additions/disallowance made by the A.O. are not with reference to any incriminating material found as a result of any search and seizure operation. He submitted, even for A.Ys. 2019-20 and 2020-21, given an opportunity, assessee can establish its case on merit through supporting evidence. Thus, Id. Counsel appearing for the assessee submitted for restoration of the issues to the file of learned first appellate authority for *de novo* adjudication. Further, Id. Counsel on behalf of the assessee assured the bench that in case the issues are restored back to learned first appellate authority, the assessee will duly comply to all the queries and properly represent its case.

7. The learned Departmental Representative ('ld. DR' for short) submitted that adequate opportunity was given to the assessee, both by the A.O. and learned first appellate authority, which the assessee failed to avail. Thus, he submitted, assessee's action does not justify restoration of the issues to learned first appellate authority.

8. We have considered rival submissions and perused the materials on record. As far as the facts are concerned, there is no dispute that assessments for A.Ys. 2014-15 to 2018-19 were completed u/s. 143(3) r.w.s. 153A of the Act, in pursuance to a search and seizure operation conducted in case of the assessee. Perusal of the assessment order for A.Y. 2014-15, which is taken as a lead appeal, reveals that in the opening sentence of paragraph 5, the A.O. has observed that the assessee furnished the details called for. However, thereafter, the A.O. has alleged that the assessee did not fully comply to the queries raised and furnished details on selective basis. Whereas, admittedly, learned first appellate authority has decided the appeals *ex parte* after rejecting the request for adjournment. Thus, it is a fact on record that the additions/disallowances made by the A.O. and sustained by learned first appellate authority are on account of lack of compliance and supporting evidence by the assessee. One of the additional grounds raised by the assessee is specifically on the issue that, in absence of any incriminating material, no addition can be made in respect of an unabated assessment completed u/s. 153A of the Act. No doubt, law is now fairly well settled on this aspect by virtue of the decision of the Hon'ble Supreme Court in the case of *Pr. CIT, Central v. Abhisar Buildwell (P.) Ltd.* [2023] 149 taxmann.com 399 (SC). However, whether the additions/disallowances are with reference to any incriminating material or not, is

purely a factual issue and has to be determined based on the facts and materials on record. Since these aspects require factual verification and due to *ex parte* disposal of the appeals, the assessee did not get an opportunity to prove its case *qua* the ground raised, in our view, in the interest of fair play and justice, the issue requires verification at departmental level.

9. Even, in respect of additions/disallowances made in regular assessments completed u/s. 143(3) of the Act, the assessee deserves an opportunity to contest them through supporting evidence. Since, Id. Counsel appearing for the assessee has assured before us that due compliance would be made before learned first appellate authority, we are inclined to restore the issues arising in the present appeals to the file of learned first appellate authority for *de novo* adjudication, after providing due and reasonable opportunity of being heard to the assessee. Further, we direct the assessee to diligently comply to the notice of hearing to be issued by the learned first appellate authority and properly represent its case through supporting evidence. In case of any further failure/default on the part of the assessee, learned first appellate authority is at liberty to decide the issues on merits, based on the facts and materials available on record.

10. Since, we are restoring the issues to the file of learned first appellate authority following the principles of natural justice, at this stage, we are not inclined to admit the additional grounds and additional evidences furnished by the assessee. However, the assessee is at liberty to raise any additional ground/issue and also furnish additional evidences, if deemed appropriate, before learned first appellate authority. Acceptance of additional grounds/additional evidence furnished or to be furnished by the assessee

have to be considered on their own merits, albeit, proper reasoning. We make it clear, the observations made by us in this order, in no way would have any influence on the decision to be taken by learned first appellate authority on the issues arising in the appeals, as, such issues have to be decided on merits after considering the relevant facts and submissions of the assessee and the applicable law. With the afore-said observations, the impugned orders of learned first appellate authority are set aside.

11. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open court on 19.12.2024

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Saktijit Dey)
Vice President

Mumbai; Dated : 19.12.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai