

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 3379/MUM/2024
Assessment Year: 2018-19**

K.D Realties Pvt. Ltd.,
H. No. 1078/I Buidling, Gala No. 28,
29, K.D. Logistic Park, Yevai Naka,
Panjrapur, BMC Road, Near Al Saint
School, Lonad Village,
Bhiwandi-421302.

PAN NO. AADCK 3114 H
Appellant

National E Assessment Centre, Delhi,
Room No. 401, 2nd floor, E Ramp
Jawaharlal Nehru Stadium New Delhi-
110003.

Vs.

Respondent

Assessee by : Mr. Tanmay Milind Phadke
Revenue by : Mr. Hemanshu Joshi, Sr. DR

Date of Hearing : 09/12/2024
Date of pronouncement : 17/12/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 29.04.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising following grounds:



1. *On the facts and circumstances of the case and in law, the National Faceless Appeal Centre/Commissioner of Income Tax (Appeals) [the learned Commissioner (Appeals)] erred in deciding the appeal ex-parte in violation of the principle of natural justice. Thus, the order dated 29.04.2024 may be set aside and the matter may be restored back to the file of the learned Commissioner (Appeals) or the Respondent/the learned assessing officer for fresh adjudication.*
2. *Without prejudice to the above, on the facts and circumstances of the case and in law, the order dated 29.04.2024 as passed by the learned Commissioner (Appeals) is bad in law since it dismisses the appeal on the reason of non-prosecution and does not adjudicate on the grounds/additional grounds of appeal and the issues under consideration. The said order being in violation of the provisions of Section 250 and 251 of the Act and the decision of the Hon'ble jurisdictional Bombay High Court in "CIT vs. Premkumar Arjundas Luthra (HUF)- [2016] 69 taxmann.com 407 (Bombay)" may be quashed.*
3. *On the facts and circumstances of the case and as per the law, the learned assessing officer and the learned Commissioner (Appeals) erred in taxing the rental income of Rs. 1,99,46,239/- as business income. Thus, the said rental income may be directed to be taxed under the head income from house property and the stand of the Appellant in this regard may be upheld.*
4. *On the facts and circumstances of the case and as per the law, the learned assessing officer and the learned Commissioner (Appeals) erred in disallowing the expenses of Rs. 58,91,594. Thus the said disallowance may be deleted.*
5. *On the facts and circumstances of the case and as per the law, the learned assessing officer and the learned Commissioner (Appeals) erred in disallowing the rental expenses of Rs. 1,19,31,182/-. Thus the said disallowance may be deleted.*
6. *On the facts and circumstances of the case and as per the law, the learned assessing officer and the learned Commissioner (Appeals) erred in adding the loans of Rs. 3,30,00,000/- u/s 68 of the Act. Thus, the said addition may be deleted.*
7. *On the facts and in the circumstances of the case and as per law, the learned assessing officer and the learned Commissioner (Appeals) erred in taxing the addition of Rs. 3,30,00,000/- at the rate of 60 percent u/s 115BBE of the Act. Thus, it may be reversed.*
8. *On the facts and circumstances of the case and as per the law, the learned assessing officer erred in making disallowance of Rs. 1,33,84,632/- pertaining to purchase of stock in trade. Thus, the said disallowance may be deleted.*
9. *On the facts and circumstances of the case and as per the law, the learned assessing officer and the learned Commissioner (Appeals) erred in adding Rs. 47, 75,855/-. Thus, the said addition may be deleted.*



2. At the outset, the Ld. counsel for the assessee submitted that in the impugned order the appeal of the assessee has been dismissed for non-prosecution but without deciding the issue in dispute on merit. The Ld. counsel for the assessee submitted that the impugned order has been challenged on two grounds. **Firstly**, for violation of the principle of natural justice and **secondly**, for not deciding the issue on merit. Regarding the first objection, the Ld. counsel submitted that in the Form No. 35 i.e. the Form prescribed for filing appeal before the Ld. CIT(A), e-mail ID for communication provided was of raju.yadav@kdlogistics.co.in, whereas the Ld. CIT(A) issued the notice on another ID upload@daoakandco.com. The Ld. counsel submitted that said e-mail ID was not seen frequently and therefore notice remained to be responded. He submitted that for the same reason assessment order was also passed ex-parte. Accordingly, the Ld. counsel submitted that the matter may be restored back to the file of the Ld. CIT(A) for deciding afresh. Regarding second objection, the Ld. counsel submitted that even in case of non-compliance on the part of the assessee, the Ld. CIT (A) cannot dismiss the appeal for non-prosecution and he was required to decide the issue on merit in view of decision of the Hon'ble Bombay High Court in the case of CIT v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay).



3. On the contrary, the Ld. Departmental Representative (DR) did not object for restoring the matter back to the file of Ld. CIT(A) for deciding afresh.

4. We have heard rival submission of the parties and perused the relevant material on record. It is evident that notices were not issued by the ld CIT(A) on the e-mail ID, which was given by the assessee in Form No. 35 but issued on e-mail ID, which was given in the return of income. In view of e-mail given in return of income being not in operation, the assessment was also completed u/s 144 of the Act. In our opinion there is a sufficient cause for non-compliance of notices issued by the Ld. CIT(A), accordingly, we feel it appropriate to set aside the order of the Ld. CIT(A) and restore the matter back to the file of the Ld. CIT(A), both on the grounds of non-receipt of the notices as well as for the reason that he was required to decide the issue on merit, even in absence of the non-compliance on the part of the assessee. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 17/12/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;



Dated: 17/12/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai