

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5899/MUM/2024
Assessment Year: 2017-18**

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| ACME Housing India Private Ltd. 19, ACME, Ghar, K.D. Road, Off. V.M. Road, Vile Parle (West), Mumbai – 400 056 (PAN : AADCA0705E) | Vs. | Assistant Commissioner of Income Tax, Central Circle- 2(3), Mumbai |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri Ravikant Pathak, AR
Revenue : Dr. K. R. Subhash, CIT-DR

Date of Hearing : 24.12.2024
Date of Pronouncement : 31.12.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-48, Mumbai, vide order no. ITBA/APL/S/250/2024-25/1068890144(1), dated 20.09.2024 passed against the assessment order by the Assistant Commissioner of Income Tax, Central Circle-2(3), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 28.12.2019 for Assessment Year 2017-18.

2. Grounds taken by the assessee are reproduced as under:

“1. The Commissioner of Income Tax (Appeals) 48, Mumbai, ('CII(A)) erred in passing an ex-parte order and dismissing the appeal of the Appellant without affording a reasonable opportunity of being heard to the Appellant as well as rejecting the request for adjournment made by the Appellant.

The Appellant prays that the order passed by the CIT(A) is against the principle of natural justice and against the law of audi alteram partem, hence, the same deserved to be quashed and set aside.

2. The CIT(A) erred in not adjudicating the action of the AO in making the disallowance of Rs. 40,24,09,376/- being depreciation claimed on goodwill under section 32 of the Income Tax Act, 1961 (Act).

The Appellant submits that goodwill is an intangible asset within the meaning of section 32(1) of the Act which has been debited in the books of the Appellant due to amalgamation of M/s. Kaltint Logistics Private Limited and M/s. Ascent Construction Private Limited with the Appellant; hence, the depreciation on goodwill arising on amalgamation has been rightly claimed by the Appellant and the same shall be allowed. Therefore, the disallowance made by the AO shall be deleted.

3. The CIT(A) erred in not adjudicating the action of the AO in making the disallowance of following expenses claimed by the Appellant by invoking Explanation to section 37 of the Act and holding the same as penal in nature:-

| Sr. No. | Particulars | Amount |
|---------|--|-----------|
| 1 | Interest on delayed payment of TDS | 70,02,958 |
| 2 | Interest on delayed filing of TDS return | 3,08,920 |
| | TOTAL | 73,11,878 |

The Appellant submits that the interest on delayed payment of TDS is compensatory in nature and not penal in nature or any offence prohibited under any law; hence, the same cannot be disallowed u/s 37(1) of the Act.”

3. We note that vide ground no.1, assessee has contended that Principle of Natural Justice have not been followed while disposing the first appeal by the ld. CIT(A) and hence it was pleaded that the matter may be remitted back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the issues of merits raised herein by affording a reasonable opportunity of being heard.

4. Brief facts of the case are that assessee filed its return of income on 07.11.2017 reporting total income at Nil. Assessee is engaged in the business of building and developing real estate property. In the course of assessment proceedings, it was observed that assessee had claimed depreciation on goodwill amounting to Rs. 40,24,09,376/- for which details were called for. Ld. AO also observed from P & L A/c that assessee had debited Rs. 70,02,958/- on account of interest on delayed payment of TDS under the head "Miscellaneous Expenses" grouped in any other expenses. Explanations were called for in this respect also. Further, ld. AO noted that assessee has claimed deduction for Rs. 3,08,920/- towards interest on delayed filing of TDS return. Assessee furnished detailed explanations justifying its claims which after considering the same, ld. AO held against the assessee and made the disallowance / addition in this respect. There were several other disallowances / additions, however assessee is in appeal before the Tribunal on the aforestated additions / disallowances.

4.1. At the first appellate stage, ld. CIT(A) issued hearing notices on 9 different dates starting from 06.02.2023, with last notice issued on 26.06.2024 asking the assessee to file submission on or before 11.07.2024. He noted that in response to all these notices, assessee had always sought adjournments. In the given situation, he thus

concluded that assessee has not been able to discharge its onus to substantiate the claims made in the grounds of appeal inspite of adequate time and opportunities given. After perusing the facts of the case and the impugned order of the AO, ld. CIT(A) observed that assessee had failed to furnish any documentary evidence in support of issues raised by it in the appeal, he upheld the disallowance /addition made by the AO finding no infirmity in the action taken by the AO. Accordingly, appeal of the assessee was partly allowed by giving relief on certain other disallowance /additions.

5. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee at the outset acknowledged the fact about 9 different notices issued for fixing the hearing at the first appellate stage. However, on all these occasions, assessee sought adjournment owing to compelling reasons of not being able to attend the hearing to furnish the explanation with documentary evidences in support of the claim made by it on the ground so raised. In order to substantiate the reasons for not attending the hearing proceedings and seeking adjournment, ld. Counsel placed on record an affidavit from the Director of the assessee. In the said affidavit, it is stated that assessee was facing financial problems for past several years. In order to consolidate the business and for better management, other companies merged with the assessee vide order by Ld. National Company Law Tribunal (NCLT) dated 30.03.2017 having effect from 01.04.2015. On account of financial problems continuing with assessee, its employees who were looking after accounts and taxation work had left the job during the period when the notices for hearing were issued. Tax Consultants repeatedly followed with the assessee for making available documents

and information to be furnished in the course of hearing but since there was no one who could compile and provide the details / documents at the end of the assessee, nothing effective could be undertaken. Subsequently, assessee could manage employ new persons to look after its accounts and taxation work who took some time to get knowledgeable with the working of the assessee. Assessee sought adjournment by explaining this situation arose before it while making its application seeking adjournment. According to ld. Counsel, ld. CIT(A) by not considering the request so made, wherein the factual position of the assessee was explained, proceeded to pass an ex-parte order by taking an adverse view on the issues for which the assessee is before the Tribunal.

7. On the strength of the explanation given in the affidavit, ld. Counsel for the assessee pleaded for restoration of the matter back to the file of Ld. CIT(A) for *denovo* meritorious adjudication by giving an undertaking that all the efforts shall be made to attend the hearings and comply with the same for effective disposal of the appeal.

8. Per contra, ld. CIT-DR strongly opposed on the prayer made by the ld. Counsel by pointing out that as many as 9 opportunities were given to the assessee who failed to attend all of them by merely seeking adjournments every time. The conduct of assessee demonstrates its irresponsible approach which should not be entertained.

9. We have heard both the parties and perused the material placed on record. Admittedly, it is an accepted fact that assessee did not attend any of the hearing fixed by the CIT(A) and sought adjournment on all the occasions. At the assessment stage, from the perusal of the order, we note that assessee made all the compliances by furnishing its explanations with corroborative documentary evidences in response to queries raised by the AO, though adverse findings were taken by making disallowance / addition while making the assessment. Assessee has placed before us an affidavit explaining the reasons for seeking adjournments and explaining the compelling reasons of not being able to attend the same. It is pointed out that these compelling reasons were furnished before the ld. CIT(A) also while praying for adjournments which provides credibility to the explanation furnished before us since it is not for the first time before us, that these are being furnished. In the given set of facts, on the one hand assessee has explained the compelling reasons for not being able to attend the hearings and on the other hand we are intrigued as to how the assessee being a company had managed its state of affairs during all this period. Before allowing the prayer of the assessee made before us, we are constrained to impose a cost of Rs. 5,000/- to be deposited by it with the Income-tax Department within two weeks so that this case is not taken as a precedence of resorting to such behaviour. Accordingly, we by accepting the prayer of the assessee remit the matter back to the file of ld. CIT(A) for denovo meritorious adjudication on the two issues raised before us, in respect of claim of depreciation on goodwill and interest on delayed payment of TDS and delayed filing of return. Needless to say that assessee be given reasonable opportunity of being heard. We also direct the assessee to be diligent in attending the hearings as and when fixed and make all the efforts for its effective disposal. Assessee should not seek adjournment unless

warranted by compelling reason. Accordingly, ground no.1 taken by the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 31 December, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 December, 2024

SK, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai