

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA.Nos.202, 203 & 204/NAG./2024 [E-APPEALS]
Assessment Years 2017-2018, 2019-2020 & 2020-2021

Tirupati Minerals and Industries, 3 rd Floor, NKY Towers, Ajni Square, NAGPUR – 440 015. Maharashtra. PAN AAHFT0298C	vs.	The DCIT or ACIT, Deputy or Asst. Commissioner of Income Tax, Central Circle-2(1), BSNL RTTC Bldg. Communication Road, Seiminary Hills, NAGPUR. Maharashtra. PIN 440 006.
(Appellant)		(Respondent)

For Assessee :	Shri Suren Duragkar, C.A.
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	27.01.2025
Date of Pronouncement :	28.01.2025

ORDER

PER V. DURGA RAO, J.M. :

The above three appeals filed by the assessee are directed against the separate orders all dated 22.02.2024, of the learned CIT(A)-3, Nagpur, relating to assessment years 2017-2018, 2019-2020 and 2020-2021. Since common issues are involved in these appeals, these appeals were heard together and are being disposed

of by this single consolidated order for the sake of convenience and brevity.

2. Facts of the case, in brief, are that the assessee is a firm and had not filed its original return of income. A survey action u/sec.133A of the Act was conducted at the business of M/s. Tirupati Developers and certain incriminating documents related to the assessee were found and impounded. Therefore, the Assessing Officer reopened the assessment u/sec.147 of the Act by taking necessary approval from the competent authority. The Assessing Officer issued statutory notices u/sec.148 and 142(1) of the Act to the assessee. Since there was no response from the side of the assessee, the Assessing Officer passed ex-parte assessment order u/sec.147 r.w.s.144 of the Act by making addition of Rs.1 lakh each for assessment years 2017-2018 and 2019-2020 and Rs.5,10,000/- for the assessment year 2020-2021 u/sec.69C of the Act on account of unaccounted cash expenditure in the hands of the assessee. In appeal, the learned CIT(A) confirmed the addition made by the Assessing Officer in absence of any explanation from the side of the assessee.

3. Aggrieved by the order(s) of the learned CIT(A), the assessee is in appeal before the Tribunal contending, *inter alia*, that he was not having any business activity during the impugned assessment year(s). He submitted that the assessee firm is a partnership firm having partners viz., Mr. Prashant Bongirwar and Mr. Rahul Urganlawar with Mr. Ashish Belorkar who are common partners in firm "Tirupati Minerals and Industries ["Assessee"] and "Tirupati Developers" [Searched Firm]. He submitted that the amounts in question were paid by M/s. Tirupati Developers on behalf of the partners. He, therefore, submitted that the impugned addition u/sec.69C of the Act is not warranted in the hands of the assessee and prayed that the addition(s) made for the impugned assessment years should be deleted.

4. The Learned DR on the other hand relied on the orders of the lower authorities. He submitted that despite numerous opportunities granted by the lower authorities, the assessee failed to substantiate its case and as such the orders of the lower authorities are in accordance with law and be confirmed.

5. I have heard the rival submissions made by both the orders and perused the material on record. I find that the authorities

below has passed ex-parte order(s) without deciding the grounds raised by the assessee on merits. As per sec.250(6) of the Act, it is the bounden duty of the learned CIT(A) to decide the appeal on merits by giving reasons for decision and adjudication thereof, even assessee did not appear before him. Since both the lower authorities passed the impugned ex-parte order(s), I deem it fit and appropriate in the larger interest of justice to restore the matter in issue back to the file of Assessing Officer to decide the issue on merits, by providing reasonable opportunity of being heard to the assessee. I made it clear that it is the assessee's risk and responsibility to plead and prove it's case in consequential proceedings without taking any adjournment under any pretext, failing which, the Assessing Officer is at liberty to pass order as per fact and law. I hold and direct accordingly.

6. In the result, all the three appeals of the assessee are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 28.01.2025.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Nagpur, Dated 28th January, 2025
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Nagpur concerned
4.	The CIT, Nagpur concerned
5.	The D.R. ITAT, Nagpur SMC-Bench, Nagpur
6.	Guard File.

//By Order//

True Copy

Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.