

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI MANOJ KUMAR AGGARWAL,
AM

ITA No. 2154/Mum/2014
(A Y: 2009-2010)
&
ITA No. 2155/Mum/2014
(A Y: 2010-2011)

M/s. Orbit Highcity Pvt. Ltd., 165, The view, 1 st Floor, Dr. Annie Besant Road, Worli, Mumbai – 400 018. PAN: AAACO9958J	Vs.	Assistant Commissioner of Income Tax, Central Circle -47, Mumbai.
Appellant	..	Respondent
Revenue by	..	Shri K.V. Narshimhacharya, CIT DR
Assessee by	..	Shri Rakesh Joshi
Date of hearing		27-07-2016
Date of pronouncement		10-08-2016

ORDER

PER MANOJ KUMAR AGGARWAL (AM) :

These sets of two appeals are filed by assessee for A.Y. 2009-10 & 2010-11 assailing *ex-parte* order of Commissioner of Income Tax (Appeals)-38, Mumbai [CIT(A)] passed u/s 143(3) r.w.s. 153A of the Income Tax Act. Since, the grievances of the assessee arises out of identical sets of facts, we proceed to dispose-off the same by this combined orders. As the facts are similar, we take up ITA No. 2154/Mum/2014 relating to A.Y. 2009-10 for adjudication. The assessee had raised the following grounds of appeal:-

1. *“On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order without providing the sufficient opportunity of being heard to the appellant.*
2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer is disallowing a sum of Rs. 2,79,00,000/- u/s. 14A r.w.r 8D of the Income Tax Act 1961, without considering the facts and circumstances of the case.”*

2. Facts in brief, are that assessee is a Resident Private company and is engaged in the business of Real Estate development. Search and seizure action u/s. 132 of the IT Act, 1961 was carried act the residence and business premises of M/s. Orbit Corporation Ltd. Group on 11/02/2010 by ADIT(inv.) unit VII(4), Mumbai. Certain incriminating documents were found during search and undisclosed income was offered by the director of the group concern which was brought to tax in the appropriate group companies/individual cases. The assessee is one of the group company and certain incriminating documents relating to assessee were found during search operation. Consequently, Assessment was completed by Assessing Officer (in short

‘AO’) u/s 143(3) r.w.s. 153A of the Income Tax Act vide order dated 14/08/2012 after making certain disallowances u/s. 14A read with rule 8D.

3. Aggrieved, assessee preferred first appeal before CIT(A) and the same was dismissed *ex-parte* vide CIT(A) order dated 24/01/2014. CIT(A) considered the material available on record and concluded the assessment with the following observations:-

“Despite adequate time and opportunity given during the appeal proceedings, not even written submissions are filed in support of the grounds of appeal. After having carefully considered the facts of the case and the reasons for disallowance brought on record by the AO the disallowance made by the AO u/s. 14A read with Rule 8D of Rs. 2,79,00,000/- is hereby confirmed.”

Aggrieved, by the order of the CIT(A), assessee is in appeal before us and raised various contentions in his favour including objections to *ex-parte* order. Further, the learned counsel for Assessee (AR) has sought permission to raise additional ground which reads as follows:-

1. *“On the facts and circumstances of the case as well as in law, the Assessment Order passed u/s. 143(3) r.w.s. 153A dated 14.08.2012 is barred by limitation accordingly the same is null & void ab-initio.”*

Thus, the order of the CIT(A) has been assailed both on merit as well as on technical grounds. AR has requested for one more opportunity of being heard in the circumstances of the case. The Learned counsel for revenue on the other hand has supported the views of the lower authorities and contended that as numerous opportunities have already provided to assessee by CIT(A) which assessee did not availed and therefore, do not deserve another opportunity.

4. We have heard both the parties and perused material on record. We notice that ample opportunity was already given to assessee by CIT(A) to contend his claim still the assessee failed to avail the same. However, in view of principle of natural justice and in the light of additional ground raised by the assessee, we deem it fit to restore the matter back to the file CIT(A) to re-adjudicate the same in the light above observation. Hence, the appeal of the assessee is allowed for statistical purposes.

5. Similarly, various additions have been confirmed by CIT(A) *ex-parte* in ITA No. 2155/M/2014 for A.Y. 2010-11 and accordingly, our stand as above apply to the same *Mutatis Mutandis*.

7. In nutshell, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 10th August, 2016.

Sd/-

**(MAHAVIR SINGH)
JUDICIAL MEMBER**

Sd/-

**(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

Mumbai, Dated: 10/08/2016

PS:- Pooja K.