

आयकर अपीलीय अधिकरण न्यायपीठ, पटना ।
IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA
(Through virtual hearing at Kolkata)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
&
DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. Nos. 64 & 65/PAT/2023
Assessment Years: 2011-12 & 2012-13

Vinayak Builders and Developers Pvt. Ltd. 101, Vaidhnath Apartment, Road No.03, Mahesh Nagar, patna-800 024	Vs	ACIT, Central Circle-03, Loknayak Bhawan, 3 rd Floor, Frazer Road, Patna-800 001 [PAN :AADCV1223G]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Ravi Shankar, Adv
Revenue by :	Shri Rinku Singh, CIT DR

सुनवाई की तारीख/**Date of Hearing** : 05.09.2024
घोषणा की तारीख /**Date of Pronouncement** : 16.10.2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The captioned appeals filed by the Assessee, pertaining to assessment years 2011-12 & 2012-13 are directed against the orders passed by the Learned Commissioner of Income Tax (Appeals), Patna-3 (hereinafter referred to as the 'ld. CIT(A)') even dated 30.12.2022 passed u/s 250 of the Income Tax Act, 1961 ('Act'), which is arising out of the assessment orders passed u/s 153A read with section 144 vide order even dated 28.03.2014.

2. At the outset, the ld. counsel for the assessee submitted that there was no appearance before the ld. AO and best judgement

assessment has been framed u/s 144 of the Act for the impugned assessment year. Further, assessee could not furnish the detail before the ld. CIT (A) in support of grounds of appeal. Prayer was thus made to restore the issue raised in the instant appeal to the file of the lower authorities for afresh adjudication.

3. The ld. DR was fair enough not to oppose to the request of the assessee for restoring the matter to the lower authorities for afresh adjudication.

4. We have heard the rival contentions and perused the records available on record. We observe that the assessee is a private limited company engaged in the business of builder and developer. Assessee was subjected to search and seizure action u/s 132 of the Act carried out at Tirupati Homes Pvt. Ltd., group of cases, Patna on 28th April, 2011. Notices u/s 153A of the Act were issued but there was no compliance thereto. Since, no details were furnished before the ld. AO, based upon the available records ld. AO passed the best judgement assessment u/s 144A of the Act making addition for unexplained cash credit at ₹1,22,86,000/- and ₹2,32,86,590/-. For A.Y. 2011-12 and A.Y. 2012-13 respectively. There is no doubt to the fact that assessee did not appear before the ld. AO even though it was an assessment post carrying out of search u/s 132 of the Act. Thereafter when the assessee challenged the impugned additions before ld. CIT (A), few details were filed and remand report was called for but again assessee / Authorised Representative of the assessee were not able to avail the further opportunities granted by ld. CIT (A) . The observation of the ld. CIT (A) at page 12 to 13 of the appellate order of the impugned order for A.Y. 2011-12 reads as under:-

"It is quite evident that the then CIT(A)-3, Patna did not admit any evidence on 19.04.2017 as claimed by the Ld. AR. It is apparent that the appeal was heard, but the order was not passed on 05.06.2017. It can be inferred that the hearing had not been finalized. On change of incumbent, the appellant was again granted opportunity by issuing notice on 09.07.2018 fixing hearing on 26.07.2018 which was not complied. Again, a notice u/s 250 was issued on 13.08.2018 fixing hearing on 13.08.2018 which were again not complied. Subsequently, also several notices were issued which was not complied or adjournment was sought. Subsequently, a notice was issued on 12.11.2022 fixing hearing on 25.11.2022 in response to which the learned AR Shri Ravi Shankar, Advocate appeared and requested for hearing on 19.12.2022. On 19.12.2022, the learned AR Shri Ravi Shankar, Advocate again appeared and filed his written submission which has already been reproduce above. It is observed that the compliance of the appellant has been extremely poor during the course of assessment proceedings. In the remand proceedings the appellant were granted second opportunity before the AO. The AO conducted independent verification which revealed that either the alleged customers who had advanced many to the appellant were not available on the given address or denied having in made any advance to the appellant. Even during the course of appellate proceedings, the Ld. AR has not been able to counter the observation recorded by the Ld. AO. During the course of appellate proceedings, the AR has not explained as to why the said document were not submitted before the AO. In absence of independent verification, the alleged advance of Rs. 2,32,86,590/- remains unverified/unproved regarding their identity, creditworthiness and also regarding genuineness of transaction. Accordingly, it is held that despite being given sufficient opportunity during the course of assessment proceedings and then again during the remand proceeding, the assessee has failed to prove the identity, creditworthiness of partner and genuineness of transaction of advance received aggregating to Rs. 2,32,86,590/-. Under the facts and circumstances of the case, I hold that the AO has correctly added Rs. 2,32,86,590/- u/s 68 of the Act. The addition is confirmed and grounds taken are dismissed."

5. Similar is the finding of ld. CIT (A) for A.Y. 2012-13. Before us, the ld. counsel for the assessee has furnished the paper books containing application for admission of additional evidence u/s 46A of the Act and other details. Considering the principle of natural justice and being fair to both the parties and under the given facts and circumstances of the case, we deem it appropriate to restore all the issues raised in the instant appeals for A.Y. 2011-12 and 2012-13 to the file of the ld. CIT (A) for fresh adjudication and direct the ld. CIT (A) to admit the additional evidence and should also call for a fresh remand report from the ld. AO and thereafter pass a speaking order as contemplated u/s 250(6) of the Act. Assessee also directed to remain vigilant and not to take any adjournment unless and otherwise required to reasonable cause. If assessee again fail to appear for hearing before the lower authority

then the ld. CIT (A) shall be at liberty to pass the order in accordance with law.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 16th October, 2024 at Kolkata.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 16.10.2024

***SS, Sr.Ps**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , पटना /DR,ITAT, **PATNA**,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, PATNA