

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 3738/DEL/2017 (A.Y 2006-07)
I.T.A. No. 3740/DEL/2017 (A.Y 2011-12)
(THROUGH VIDEO CONFERENCING)**

DCIT Central Circle-19, Room No. 104, First Floor, Hall No. 1, E-2, ARA Centre, Jhandewalan New Delhi (APPELLANT)	Vs	Saamag Construction Ltd. B-67, Sarita Vihar New Delhi AAHCS8522R (RESPONDENT)
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Appellant by	Sh. Prakash Dubey, Sr. DR
Respondent by	None

Date of Hearing	06.09.2021
Date of Pronouncement	15.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the Revenue against the order dated 30/03/2017 passed by CIT(A)-27, New Delhi for assessment year 2006-07 & 2011-12 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 3738/DEL/2017 (A.Y 2006-07)

1. *“That the Id. CIT(A) erred in law and on facts in quashing the order of the Assessing Officer without properly appreciating the facts and circumstances of the case.*
2. *That the Ld. CIT(A) erred in law and on facts in deleting the addition*

of Rs.3,55,88,631/- made on account of section 69C of the Act without properly appreciating the facts and circumstance of the case.

(a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.

I.T.A. No. 3740/DEL/2017 (A.Y 2011-12)

1. *“That the Id. CIT(A) erred in law and on facts in quashing the order of the Assessing Officer without properly appreciating the facts and circumstances of the case on account of non-receiving of notice u/s. 143(2) of the Act.*
2. *That the Ld. CIT(A) erred in law and on facts indeleting the addition of Rs.92,95,684/- made on account of deemed dividend u/s.2(22)(e) of the Act without properly appreciating the facts and circumstance of the case*
3. *That the Ld. CIT(A) erred in law and on facts indeleting the addition of Rs.1,11,53,360/- made on account of development rights without properly appreciating the facts and circumstance of the case.*
4. *(a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*

3. When the matter was called out none appeared for the assessee despite issuing notice through RPAD by the Registry of the Tribunal as well as through notice dated 13/7/2021 by the Revenue Office. The Ld. DR has submitted report dated 11/8/2021 wherein it is stated that the notice was served physically on 11th August, 2021 by giving details of hearing on 6/9/2021. Therefore, we are proceeding with both the appeals ex-parte and taking the contentions of the assessee before the Assessing Officer and the CIT(A) as the contentions taken before us. The Ld. DR argued ITA No. 3740/Del/2017 in the beginning.

I.T.A. No. 3740/DEL/2017 (A.Y 2011-12)

4. The assessee company is engaged in the business of real estate development i.e. acquisition of land, development thereof, construction of residential apartments, commercial complexes etc. A search and seizure operation was conducted on the assessee as well as in the case of group companies on 29.01.2009. For the year under consideration, the case of the assessee was concluded u/s 153A/143(3) vide order dated 03.08.11 at an income of Rs.4,34,09,680. Thereafter, notice u/s 148 dated 19.03.2014 along with reasons was issued to the assessee. In response, the assessee on 17.04.14 filed a letter stating that returns of income filed u/s 139(1) & 153A may be taken as return of income u/s 148 of the Act. Further the assessee submitted before the Assessing Officer that the return of income u/s 148 is filed under protest as the notice u/s 148 is barred by limitation. Notice u/s 143(2) & 142(1) dated 13.06.14 were issued and served upon the assessee. In response to statutory notices, authorized representatives of the assessee attended the reassessment proceedings and furnished necessary details, information and documents as called for by the assessing officer from time to time and the case was discussed. Thereupon, the re-assessment in this case was completed in terms of an order u/s 147 dated 20.03.2015 at an income of Rs.4,22,03,734/- wherein the Assessing Officer made an addition of Rs.3,55,88,631/- on account of Section 69C of the IT Act, 1961.

5. Being aggrieved by assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

6. The Ld. DR submitted that the CIT(A) has proceeded on the basis that no proper service was effectuated to the assessee but in-fact the assessee was properly served which can be seen from the CIT(A)'s order at page 13 wherein the remark of the Assessing Officer was extracted. The Ld. DR further

submitted that the CIT(A) has based the finding only on the technical issues and not decided the case on merit. Therefore, the matter may be remanded back to decide the same on merit as well. The Ld. DR relied upon the decision of the Delhi Tribunal in case of Harvinder Singh Jaggi Vs. ACIT in ITA No. 672/Del/2013 order dated 12/12/2016.

7. We have heard Ld. DR and cognizance of all the relevant material available on record including that of assessee's submissions was taken into account. The CIT(A) has only proceeded on the basis that the notice was not served, but in the affidavit of the assessee filed by the Director of the assessee Company, it is clearly mentioned that the notice u/s 142 (1) was personally served by the ACIT, Central Circle-10, New Delhi on the Authorized Employee of the Company. As regards to notice u/s 143(2), the same was served by Speed Post and at no point of time, the CIT(A) stated that or given a finding that the notice was return back. There was no postal report called for by the CIT(A) and merely on the basis of assessee's submissions, the matter was allowed in favour of the assessee on technical issue and not at all decided on merit. Therefore, it will be appropriate to remand back the issue to the file of the CIT(A) for deciding the issues on merit rather than technical aspect as the CIT(A) has not called for any particular evidence as to the service of notice confirming that the said notice was not served within six months period. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, ITA No. 3740/Del/2017 is partly allowed for statistical purpose.

I.T.A. No. 3738/DEL/2017 (A.Y 2006-07)

8. The assessee Company is engaged in the business of real estate development i.e. acquisition of land, development thereof, construction of residential apartments, commercial complexes etc. The assessee filed its return of income on 30.09.2011 declaring a loss of Rs. 2,66,38,549/- which was

processed u/s 143(1) of the IT Act, 1961. The case of the assessee was taken up for scrutiny and statutory notices u/s 143(2) was issued on 25.09.2012. Notice u/s 142(1) was issued on 15.07.2013 along with questionnaire. The assessee vide letter dated 30.07.2013 and 11.11.2013 has submitted that it has not received the notice issued u/s 143(2) of the Act. In response to statutory notices, the Authorized Representatives of the assessee attended the assessment proceedings and furnished necessary details, information and documents as called for by the assessing officer from time to time and the case was discussed. Thereupon, the assessment in this case was completed in terms of an order u/s 143(3) dated 10/03/2014 at a reduced loss of Rs.61,89,505/- as against the returned loss of Rs. 2,66,38,549/- wherein the Assessing Officer made an addition of Rs. 1,11,53,360/- on account of development rights and Rs. 92,95,684/- u/s 2(22)(e) of the IT Act, 1961.

9. Being aggrieved by assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

10. The Ld. DR submitted that the CIT(A) has proceeded on the basis that no proper service was effectuated to the assessee but in-fact the assessee was properly served which can be seen from the CIT(A)'s order at page 13 wherein the remark of the Assessing Officer was extracted. The Ld. DR further submitted that the CIT(A) has based the finding only on the technical issues and not decided the case on merit. Therefore, the matter may be remanded back to decide the same on merit as well. The Ld. DR relied upon the decision of the Delhi Tribunal in case of Harvinder Singh Jaggi Vs. ACIT in ITA No. 672/Del/2013 order dated 12/12/2016.

11. We have heard Ld. DR and cognizance of all the relevant material available on record including that of assessee's submissions was taken into account. The CIT(A) has only proceeded on the basis that the notice was not served, but in the affidavit of the assessee filed by the Director of the assessee Company, it is clearly mentioned that the notice u/s 142 (1) was personally

served by the ACIT, Central Circle-10, New Delhi on the Authorized Employee of the Company. As regards to notice u/s 143(2), the same was served by Speed Post and at no point of time, the CIT(A) stated that or given a finding that the notice was return back. There was no postal report called for by the CIT(A) and merely on the basis of assessee's submissions, the matter was allowed in favour of the assessee on technical issue and not at all decided on merit. Therefore, it will be appropriate to remand back the issue to the file of the CIT(A) for deciding the issues on merit rather than technical aspect as the CIT(A) has not called for any particular evidence as to the service of notice confirming that the said notice was not served within six months period. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, ITA No. 3738/Del/2017 is partly allowed for statistical purpose.

11. In result, both the appeals of the Revenue are partly allowed for statistical purpose.

Order pronounced in the Open Court on this 15th Day of September, 2021

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated : 15/09/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

