

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.1347/M/2013  
Assessment Year: 2009-10**

DCIT -10(1), 455, 4 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai - 400020	Vs.	M/s. Landmark Ltd., Enterprise Centre, 2 <sup>nd</sup> Floor, 17/5, Off Nehru Road, Vile Parle (E), Mumbai 400 099 <b>PAN: AABCL1748E</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri A.B. Koli, D.R.

Date of Hearing : 25.08.2016  
Date of Pronouncement : 25.08.2016

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The above titled appeal has been preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT (A)] dated 09.11.2012.

2. We have noticed from the file that this appeal was filed by the Department on 18.02.13 but till date no service of the respondent-assessee has been affected. Many a times it has been directed by this Tribunal to effect the service of the respondent through Department. On 18.05.15 an adjournment was sought by the Ld. D.R. stating that due to overload of work and non availability of assessment of records he could not properly prepare in this case. On the said date i.e. on 18.05.15 it was noticed by the Tribunal that the service of the assessee was also not effected. Hence, on the request of the Ld. D.R., the matter was adjourned and it was directed that the notice be issued to the respondent through Department and the matter was adjourned for 28.10.15.

Then again on 28.10.15 it was noticed that the notice was not served by the Department on the assessee. The Department was directed to produce the evidence of service of notice to the respondent. Directions for issuance of fresh notice were also issued. The matter was adjourned for 18.05.16. However, on 18.05.16, the Ld. D.R. could not produce evidence regarding the service of notice upon the respondent. It was noticed by the Tribunal that the notice had remained unserved when sent by the Tribunal at the address mentioned in form 36 which is the prescribed form of appeal as provided under rule 47 of the Income Tax Rules, 1962 for filing appeal to this Tribunal. The Tribunal, therefore, directed the Department to file a revised form 36 placing correct address of the respondent-assessee on record and also to file evidence of service of notice of hearing for the next date of hearing. Case was adjourned to 16.08.16. However, on 16.08.16 the Ld. D.R. again sought time stating that he had already written letter to the concerned Assessing Officer (hereinafter referred to as the AO)/DCIT, Circle-2(3)(1), Mumbai. At the request of the Ld. D.R. the case was again adjourned for 24.08.16. However, on 24.08.16, the Ld. D.R. again informed us that the AO has not acted despite his repeatedly writing letters to the concerned AO and despite fully conveying the directions of the Tribunal to the concerned AO. At this, the Tribunal directed the concerned AO to appear personally so that it may be gathered whether the concerned ACIT/Department is really interested in pursuing the present appeal and as to why the time and again directions of the Tribunal have not been complied with; and the case was adjourned to 25.08.16. On 25.08.16, the concerned AO appeared but he had not plausible explanation to offer.

3. We have gone through the letters placed by the Ld. D.R. on the file. We find earlier the Ld. D.R. had addressed/sent a letter dated 22.06.16 to the concerned DCIT, Circle-2(3)(1), Mumbai along with enclosures requesting the concerned DCIT to file a revised form No.35 (wrongly written instead of form No.36) with correct address of the assessee as the assessee had merged with

M/s. Trent Ltd. having jurisdiction in his circle. The reference of the above stated letter dated 22.06.16 finds mention in the letter dated 12.08.16 of the D.R./Joint Commissioner of Income Tax (Sr. A.R.). Thereafter, vide letter dated 12.08.16 the concerned DCIT, Circle-2(3)(1) was again requested to file the revised form on that day itself as the case was fixed for next working day i.e. 16.08.16. But no action was taken by the concerned DCIT. As on 16.08.16, the case was adjourned to 24.08.16, the concerned D.R. (Senior A.R.) of the department again sent a letter dated 16.08.16 to the concerned DCIT, Circle-2(3)(1) stating that the case had been adjourned to 24.08.16 at the Department's request. He again requested the concerned DCIT to file revised form No.36 with correct address of the assessee as requested vide letter dated 12.08.16. However, there was no action on the part of the DCIT. As observed above, on 24.08.16 the concerned D.R. has shown his helplessness as the concerned AO/DCIT had ignored all his requests and no communication/reply was received from the concerned AO/DCIT. In view of the above events, the concerned AO was directed to appear personally and explain his position. The concerned D.R. again wrote a letter dated 24.08.16 to the concerned AO/ DCIT, Circle-2(3)(1), Mumbai that the matter has been adjourned that he should come present before the Tribunal on 25.08.16 along with assessment records and modified form No.36.

4. However, today i.e. on 25.08.16, the Ld. D.R. has filed a letter that he had again informed the concerned AO to file revised form No.36. The concerned AO has also come present. When asked why he did not act upon the repeated directions of the Tribunal, he had no explanation to offer. He, however, tried to explain that he was not the concerned AO. However, when a specific query was raised by this Tribunal to the concerned D.R. as well as the AO present in court, both admitted that the AO Shri Madhukar A.V.S., ACIT, Circle-2(3)(1), Mumbai who was present in court was the concerned AO of the assessee. A copy of the letter addressed by the said ACIT, 2(3)(1) to the

concerned D.R. dated 24.08.16 has also been placed on file wherein the concerned AO has mentioned that the case records of the present assessee were lying with ACIT 14(2)(1), Mumbai. It has also been mentioned that the said ACIT 14(2)(1), Mumbai had written to the AO in this case i.e. ACIT – 2(3)(1) that the assessee company has been merged with M/s. Trent Ltd. It has also been mentioned that though the case records for A.Y. 2013-14 of M/s. Trent Ltd. have been received in his office [of ACIT-2(3)(1)] but there was no mention in the transfer memo that the appeal of the assessee for prior years was pending before the Tribunal. It has also been mentioned that he was under process to transfer a case of M/s. Trent Ltd. to ACIT -14(2), Mumbai. The above explanation, in our view, shows that the concerned ACIT-2(3)(1), Mumbai has never applied his mind or bothered to consider about the time and again directions of the Tribunal and time and again letters written by the concerned departmental representative to ACIT-2(3)(1). The explanation offered by the concerned ACIT to the Ld. D.R. through his letter dated 24.08.16 is not convincing at all as the concerned ACIT-2(3)(1) was well aware of the pendency of this appeal before this Tribunal. He was also well aware of the factual position that assessee company has merged with M/s. Trent Ltd. It is revealed that till date no effort has been made by the concerned DCIT to file revised form No.36 before this Tribunal or to comply with any of the directions regarding service of notice upon the assessee.

5. We do not find any justification for further continuation of this non-serious of appeal by the Department. The appeal can not be continued without filing of proper form No.36. The concerned officers have miserably failed to comply with the standing “instructions regarding standard operating procedure on filing of appeals to ITAT under section 253 and related matters” issued by the CBDT. The memorandum of appeal of the Revenue is therefore rejected

and the appeal of the Revenue is dismissed as not admitted.

**Order pronounced in the open court on 25.08.2016.**

**Sd/-**  
**(B.R. Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 25.08.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.