

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.4182/Del/2016  
Assessment Year: 2012-13**

DBM Marketing India Pvt. Ltd., K.No. 203, Plot No 5, 1 <sup>st</sup> Floor, Govind Mohalla Extn., Haiderpur, New Delhi – 110088 AACCD5472C	Vs	DCIT, Circle-7(1), New Delhi
Applicant		Respondent

<b>Assessee by</b>	<b>Mr. Ashu Goel, CA</b>
<b>Revenue by</b>	<b>Mr. Abhishek Kumar, Sr. DR</b>

<b>Date of Hearing</b>	<b>13.05.2019</b>
<b>Date of Pronouncement</b>	<b>13.05.2019</b>

**ORDER**

**PER NARASIMHA K. CHARY, JM**

Aggrieved by the order dated 17/12/2015, in Appeal No. 334/2012-13 by the learned Commissioner of Income Tax (Appeals)-3, Delhi ("Ld. CIT(A)"), assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company trading in electronic goods, Packed fruit juices etc. For the assessment year 2012-13 they have filed their return of income on 29/9/2012 declaring an income of Rs. 58,24,260/-. Learned Assessing Officer, however, by order dated 25/2/2015 assessed the income of the assessee at Rs.

89,63,070/-by making addition of Rs. 16,38,809/- on account of the net profit ratio and a sum of Rs. 15,00,000/-under section 68 of the Act.

3. Appeal preferred by the assessee was dismissed by the Ld. CIT(A) on the ground that the assessee did not enter appearance before him in spite of issuance of notices and there was nothing on record to suggest that the assessee was interested in pursuing the appellate proceedings. Hence the assessee preferred this appeal.

4. At the outset, it is the argument of the Ld. AR that no notice was served on the assessee in the appeal before the Ld. CIT(A) and that is the reason why the assessee could not enter any appearance before the Ld. CIT(A). He further submitted that the Ld. CIT(A) did not advert to the merits of the case and dismissed the appeal in limine. He therefore prayed that an opportunity may be granted to the assessee to put forth their case before the Ld. CIT(A).

5. Per contra it is the argument of the Ld. DR that sufficient opportunity was granted to the assessee by the Ld. CIT(A) as could be seen from the impugned order and notices dated 6/08/2015, 7/9/2015, 7/10/2015 and two reminders thereafter were issued but in vain. He therefore submitted that if the assessee does not cooperate with the authorities for the disposal of the matter on merits, nothing is left at the disposal of the Ld. CIT(A), except to proceed ex parte.

6. We have gone through the record in the light of the submissions made on either side. The impugned order reads that the notices were issued, but there is no finding as to whether they were served on the assessee or not. Having regard to the common course of natural events,

human conduct and public and private business in relation to the conduct of the assessee in this matter, we are of the considered opinion that if the assessee is served with notice, they do not stand to gain by not participating in the first appellate proceeding.

7. We, therefore, do not find anything improbable or reason to suspect in the conduct of the assessee or not to believe their version that no notice was served on them. Further, the highest that would happen by affording an opportunity to the assessee to put forth their case before the Ld. CIT(A), is that a cause could be decided on merits which is always in the interest of Justice. When the technical considerations are pitted against the possibility of delivery of justice, it is the settled principle of law that the former must give way to the latter.

8. With this view of the matter, we find that this is a fit case to set aside the impugned order and remand the matter to the file of the Ld. CIT(A) for disposal afresh after affording an opportunity to the assessee of being heard. We make it amply clear that it would be a last opportunity to the assessee to get the appeal disposed of on merits before the Ld. CIT(A). We order accordingly.

9. In the result, appeal of the assessee is allowed for statistical purpose.

**Order pronounced in the Open Court on 13<sup>th</sup> May, 2019.**

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

**Dated: 13<sup>th</sup> May, 2019**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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