

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA

**Before: Shri P.M. Jagtap, Vice-President (KZ) and
Shri A.T. Varkey, Judicial Member**

**I.T.A No. 299/Kol/2020
A.Y: 2015-16**

M/s. Infinity Builders
PAN: AACF12562F

Vs.

Income Tax Officer
Ward 26(2), Kolkata

[Appellant]

[Respondent]

For the Appellant : None appeared
For the Respondent : Shri Jayanta Khanra, JCIT, Id.Sr.DR

Date of hearing (Virtual) : 05-10-2020
Date of pronouncement : 05 -10-2020

ORDER

Shri P.M. Jagtap, V.P:

This appeal preferred by the assessee is directed against the order of the Ld. CIT (Appeals) - 7, Kolkata dated 20-09-2019 passed *ex parte*, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is a partnership firm, which is engaged in the construction business. The return of income (R.O.I) for the A.Y under consideration was filed by it on 24-09-2015 declaring total income of Rs.97,840/-. In the assessment completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter, referred to as the ‘Act’). by an order dt 28-12-2017, the total income of the assessee was determined by the AO at Rs.1,86,27,410/- after making the following additions: -

- i) undisclosed income Rs. 6,55,493/-
- ii) undisclosed sale Rs. 1,22,00,258/-
- iii) deemed income u/s. 43CA Rs.50,35,136/-, and
- iv) undisclosed interest income Rs.6,38,680/-

3. Against the order passed by the AO u/s. 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no compliance on the part of the assessee

to the notices issued by him fixing the said appeal for hearing from time to time, the Ld. CIT(A) dismissed the appeal of the assessee for non- prosecution vide his appellate order dated 20-09-2019 passed ex parte. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before this Tribunal.

4. At the time of hearing before this Tribunal, none has appeared on behalf of the assessee. It is, however, observed that the appeal filed by the assessee before the Ld. CIT(A) has been dismissed by him for non-prosecution by the impugned order passed ex parte without going into the merits of the issues raised by the assessee in the said appeal. As per specific provisions contained in sub-section (6) of section 250 of the Act, the Ld. CIT(A) was required to dispose off the appeal of the assessee by an order in writing stating therein points for determination, the decision thereon and the reasons for the decision. The impugned order of the Ld. CIT(A) does not comply with these requirements and this position clearly manifest from the impugned order passed by the Ld. CIT(A) ex parte is not disputed even by the Ld. DR. He, however, has urged that the matter may be sent back to the Ld. CIT(A) for disposing off the appeal of the assessee afresh on merits as per the provisions of sub-section (6) of section 250 of the Act. We find merit in the contention of the Ld. DR. Accordingly, the impugned order passed by the Ld. CIT(A) ex parte is set aside and the matter is remitted back to him for disposing off the appeal of the assessee afresh on merits by passing a well discussed and well reasoned order after giving the assessee proper and sufficient opportunity of being heard. The assessee is directed to make due compliance before the Ld. CIT(A) and to extend all possible co-operation in order to enable the Ld. CIT(A) to dispose off the grounds afresh

5. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 5th October, 2020.

Sd/-
A.T. Varkey
Judicial Member

Sd/-
P.M. Jagtap
Vice President (KZ)

Dated 05-10-2020

****PP(Sr.P.S.)**

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Infinity Builders Ramkrishna Pally, Sonarpur, Kolkata-700150.
2. Respondent/Revenue: ITO., Ward 26(2), Aaykar Bhawan, Dakshin, 3rd Fl., 2 Gariahat Road (S), Kolkata-68.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

****PP/SPS True Copy By By Order**

Assistant Registrar
ITAT Kolkata