

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

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT)**

**AND**

**SHRI SAKTIJIT DEY ( JUDICIAL MEMBER)**

I.T.A. No.3337/Mum/2017  
(Assessment Year : 2012-13)

M/s Swaraj Infrastructure Pvt Ltd No.405, 4 <sup>th</sup> Floor, CBD Belapur Navi Mumbai-400 705 <b>PAN : AAKCS2296P</b>	vs	DCIT-15(3)(2), Mumbai
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	None
Respondent by	Shri T.S. Khalsa

Dt of hearing	19-01-2021
Dt of pronouncement	27-01-2021

**ORDER**

Per Saktijit Dey (JM),

This is an appeal by the assessee against the order dated 11-01-2017 of learned Commissioner of Income Tax (Appeals)-25, Mumbai for the assessment year 2012-13.

2. When the appeal was called for hearing, no one was present on behalf of the assessee. On perusal of order sheet entries, we find, on several occasions when the appeal was fixed earlier, the assessee has never appeared to represent his case. Keeping these facts in view and considering the nature of dispute, we proceed to dispose of the appeal ex parte qua the assessee, after hearing the learned Departmental representative and on the basis of material on record.

3. Briefly the facts are, the assessee, a resident company, is engaged in the business of civil and infrastructure project. For the assessment year under dispute, assessee filed its return of income on 13-09-2012 declaring total income of Rs.2,44,95,940/-. Assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 23-06-2015 making certain additions / disallowances resulting in determination of total income at Rs.2,82,09,470/-. Against the assessment order so passed, assessee preferred an appeal before the first appellate authority. However, as noted by learned Commissioner (Appeals), since the assessee failed to appeal before him, he dismissed the appeal.

4. We have heard the learned Departmental Representative and perused the materials on record. Undisputedly, learned Commissioner (Appeals) has disposed of assessee's appeal ex parte alleging that the assessee has failed to appear before him despite opportunity being granted. However, on a perusal of the impugned order of learned Commissioner (Appeals), we find that he dismissed assessee's appeal simply on the ground of non appearance and has not decided the issues on merits. In other words, the disposal of the appeal by learned Commissioner (Appeals) is through a non speaking order. In view of the aforesaid, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to his file for fresh adjudication after due opportunity of being heard to the assessee. It is made clear, learned Commissioner (Appeals) has to dispose of the appeal by deciding the issues raised on merits through a speaking order with proper reasoning. Grounds are allowed for statistical purpose.

5. In the result appeal is allowed for statistical purpose.

Order pronounced in the Open Court on this 27/01/2021.

Sd/-

sd/-

<b>(PRAMOD KUMAR)</b>	<b>(SAKTIJIT DEY)</b>
<b>VICE PRESIDENT</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dated : 27/01/2021.  
Pavanan, Sr.P.S (on contract)

Copy of the order forwarded to :

1. The Appellant.
2. The Responent.
3. The CIT(A)
4. 4. The CIT
5. D.R., ITAT, Mumbai.
6. Guard File.

//True Copy//

By order

I.T.A.T., Mumbai.