

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA
[Before Shri A. T. Varkey, JM & Shri Rajesh Kumar, AM]**I.T.A. No. 383/Kol/2020**
Assessment Year: 2012-13

Massive Infrastructure Pvt. Ltd. (PAN: AAHCM2088C)	Vs.	Income-tax Officer, Ward-4(2), Kolkata.
Appellant		Respondent

Date of Hearing (virtual)	06.01.2022
Date of Pronouncement	02.02.2022
For the Appellant	Shri Manoj Kataruka, Advocate
For the Respondent	Md. Ghayas Uddin, CIT, DR

ORDER**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-2, Kolkata dated 05.01.2017 for AY 2012-13.

2. At the outset, the Ld. AR of the assessee Shri Manoj Kataruka submitted that the impugned order is an ex parte order passed by the Ld. CIT(A). According to Ld. AR though the Ld. CIT(A) states that two notices were issued fixing the date of hearing on 20.11.2016 and 26.12.2016 and he had received the notices back from the Postal Department with the remark that “*No such company in this address and hence returned back to the centre,*” but the Ld. AR states that the assessee is still functioning in the same address 8/1, Lal Bazar Street, Kolkata-700 001 and the same address is being reflected in Form No. 36 also. Be that as it may be, since the Ld. CIT(A) has passed the order without hearing the assessee and not on merits there is a violation of Natural Justice. Therefore, we are inclined to set aside the impugned order of Ld. CIT(A) and restore the appeal back to the file of the Ld. CIT(A) with a direction to issue notice as per section 127 of the Income Tax Rules, 1962 (hereinafter referred to as the “Rules”), wherein it has been held as under:

“[Service of notice, summons, requisition, order and other communication.

127.(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or

any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).

(2) The addresses referred to in sub-rule (1) shall be—

- (a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—
- (i) the address available in the PAN database of the addressee; or
 - (ii) the address available in the income-tax return to which the communication relates; or
 - (iii) the address available in the last income-tax return furnished by the addressee; or
 - (iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:

¹**Provided further** that where the communication cannot be delivered or transmitted to the address mentioned in item (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:—

- (i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or
 - (ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or
 - (iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or
 - (iv) the address of the assessee as furnished in Form No.61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or
 - (v) the address of the assessee as furnished in Form No.61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or
 - (vi) the address of the assessee as available in the records of the Government; or
 - (vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.]
- (b) for communications delivered or transmitted electronically—
- (i) e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or
 - (ii) the e-mail address available in the last income-tax return furnished by the addressee; or
 - (iii) in the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs; or
 - (iv) any e-mail address made available by the addressee to the income-tax

authority or any person authorised by such income-tax authority.

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedure, formats and standards for ensuring secure transmission of electronic communication and shall also be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to such communication.]”

3. From the reading of the aforesaid Rule, it is clear that notice would be issued, *inter alia*, to the e-mail ID reflected in the return of income or as prescribed in sub-clause (b) of Rule 127(2) of the Rules. Since the Ld. CIT(A) has made an averment that the notices could not be served upon the assessee, we deem it fit to provide the e-mail ID of the Ld. AR also, so that a copy can be given to him also, so that the hearing can happen without any fetter. The Ld. AR’s e-mail ID is manojkataruka@hotmail.com. The assessee is also may file written submission as well as documents in support of its claim if advised so and Ld. CIT(A) to pass speaking order while disposing the appeal in accordance to law.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 2nd February, 2022.

Sd/-
(Rajesh Kumar)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated: 02.02.2022

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant– M/s. Massive Infrastructure Pvt. Ltd., 8/1, Lal Bazar Street, Kolkata-700 001.
2. Respondent– ITO, Ward-4(2), Kolkata.
3. CIT(A)-2, Kolkata. (sent through e-mail)..
4. CIT, Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail)..

True Copy

By Order

Sr. Private Secretary/DDO
ITAT, Kolkata Bench, Kolkata