

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 391/Del/2020
Assessment Year: 2016-17

Desiccant Rotor International Pvt. Ltd., 20- Rajpur Road, New Delhi PIN: 1100 19		Addl. CIT, Range-3, New Delhi
PAN :AAACA0350N		
(Appellant)		(Respondent)

Appellant by	Shri Shailender Bajaj, CA and Shri R.R. Maurya, Adv.
Assessee by	Shri Jagdish Singh, SR. DR

Date of hearing	26.07.2022
Date of pronouncement	26.07.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 14.01.2019 of the learned Commissioner of Income-Tax (Appeals)-3, New Delhi, for the assessment year 2016-17.

2. We have heard Shri Shailender Bajaj, Learned Authorized Representative of the assessee and Shri Jagdish Singh, learned Departmental Representative.

3. The primary grievance of the assessee in the present appeal is against ex parte disposal of its appeal by learned first appellate authority.

4. As could be seen from the facts on record, assessee is a resident corporate entity. For the assessment year under dispute, assessee filed its return of income on 30.11.2016 declaring income of Rs.33,05,66,780 under the normal provisions and book profit of Rs.42,77,43,466 under Section 115 JB of the Act. Assessment in case of assessee was completed under Section 143(3) of the Act vide order dated 20.12.2018, determining the total income at Rs.33,25,05,600 under the normal provisions. The variation in the income determined was due to couple of disallowances made by the assessing officer.

5. Be that as it may, against the assessment order so passed, assessee preferred an appeal before Commissioner (Appeals). However, by the impugned order, learned Commissioner (Appeals) has dismissed assessee's appeal.

6. On a perusal of the impugned order of learned Commissioner (Appeals), it is evident that he has proceeded to dispose of the appeal ex parte. From the observations made by him in paragraph 4 of the impugned order, it is observed, first notice of hearing was issued on 09.08.2019 fixing the date of hearing to 09.09.2019. Thereafter, on the request of the assessee, the appeal was adjourned to 24.10.2019. As it appears from the observations of learned Commissioner (Appeals) on 24.10.2019 and 26.11.2019 when the appeal was fixed for hearing, there was no compliance from assessee's side. Stating that reasonable opportunity has been granted to the assessee, learned Commissioner (Appeals) disposed of the appeal by dismissing it.

7. We do not dispute the authority of learned First Appellate Authority to proceed ex parte in case of repeated non-compliance by the assessee. However, in the facts of the present case, learned Commissioner (Appeals) has dismissed the appeal for want of prosecution and has not decided the appeal on merits. In our view, this is against the scheme of Sections 250 and 251 of the Act. Irrespective of the fact, whether assessee appears or not, learned Commissioner (Appeals) is duty bound to decide the appeal on merits with a

reasoned order. That is not the case here. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and restore the issue back to his file for de novo adjudication on merits after due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 26th July, 2022.

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 26th July, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi