

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.349/Del/2021**

**[Assessment Year : 2009-10]**

Jyoti Super Construction & Housing Pvt.Ltd., 1210, Tower A, Corenthum, Sector-62, Noida, Uttar Pradesh-201303. <b>PAN-AABCJ3395F</b>	vs	JCIT, Range-1, Noida.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Anuj Garg, Sr. DR	
<b>Date of Hearing</b>	03.08.2022	
<b>Date of Pronouncement</b>	03.08.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2009-10 is directed against the order of Ld. CIT-I, Noida dated 30.03.2018. The assessee has raised following grounds of appeal:-

1. *"Because the learned Commissioner of Income Tax has erred in law and on facts while confirming the impugned penalty order passed by the AO under section 271(1)(c) of I.T.Act.*
2. *Because the learned Commissioner of Income tax (Appeals) has erred in law and on facts dismissed the appeal of the Appellant without affording opportunity of being heard and confirmed the penalty order arbitrarily.*
3. *Because the learned Commissioner of Income tax (Appeals) has erred in law and on fact in passing the impugned order under section 250 without serving the notice of hearing to the Appellant.*
4. *Because the learned Commissioner of Income tax (Appeals) had erred in law and on facts by rejecting the appeal without considering the merits of penalty of Rs. 12,80,000/- where the subject matter of*

*penalty was the income of Rs.41,27,163/- by treating it as the income of Assessment year 2009-10 in place of assessment year 2011-12.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that the notice sent through speed post is returned back unserved by the Postal Authority. The assessee has not provided any new address to the Registry. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and disposed off on the basis of material available on record.

### **FACTS OF THE CASE**

3. Brief facts of the case are that in this case the assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) was framed vide order dated 23.12.2011, thereby, the AO made two additions of Rs.41,27,163/- on account of profit on sale of land and Rs.10,00,217/- on account of disallowance of expenses under head material purchase and wages. Penalty proceedings u/s 271(1)(c) of the Act were initiated separately against the assessee for submitting inaccurate particulars of income. Thereafter, the AO imposed the impugned penalty u/s 271(1)(c) of the Act.

4. Aggrieved against this, the assessee carried the matter before Ld.CIT(A), who after considering the submissions, dismissed the appeal for want of prosecution.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Sr. DR pointed out that even before Ld.CIT(A), there was no representation on behalf of the assessee. He contended that the assessee has been negligent in prosecuting the appeal before Ld.CIT(A). He supported the orders of the authorities below.

7. We have heard the contention of Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) dismissed the appeal of the assessee by observing as under:-

*2. "The appeal of the appellant was fixed for hearing for 16.03.2018 and again for 28.03.2018. There has been no response. Neither the appellant has entered appearance nor any request for adjournment has been received. As the appellant is not keen on prosecuting its appeal, the same is dismissed for want of prosecution. The impugned assessment order stands confirmed."*

8. The assessee in the present appeal is aggrieved against the order of Ld. CIT(A) on account of non-providing adequate opportunity of hearing to the assessee. From the impugned order, we find that the assessee was given sufficient opportunity of hearing on 16.03.2018 and 28.03.2018. Therefore, considering the principal of natural justice, we are of the considered view that Ld.CIT(A) ought to have afforded adequate opportunities to the assessee. Moreover, we find that the Ld.CIT(A) has dismissed the appeal purely on the basis of non-prosecution without deciding the appeal on merit. Hence, we set aside the impugned order and restore the grounds to the Ld. CIT(A) to decide the matter afresh on merit. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 03<sup>rd</sup> August, 2022.

**Sd/-**

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI