

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1529/Mum./2022
(Assessment Year : 2015-16)

SNB Infrastructure Pvt. Ltd.
Mohd. Hussain Compound
Nr. Maharashtra Weigh Bridge
LBS Marg, Kurla, Mumbai 400 070
PAN – AAMCS0182N

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-14(3)(2), Mumbai

.....Respondent

Assessee by : None
Revenue by : Smt. Mahita Nair

Date of Hearing – 30/08/2022

Date of Order – 20/10/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 22/03/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2015-16, which in turn, arose from the order dated 28/12/2017, passed by the Assessing Officer under section 143(3) of the Act.

2. When this appeal was called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed.

Therefore, we proceed to dispose off this appeal ex-parte, qua the assessee after hearing the learned Departmental Representative ("*learned DR*") and on the basis of material available on record.

3. The present appeal filed before us is delayed by 6 days. During the course of hearing, learned DR did not raise serious objections against the prayer for condonation of delay. Accordingly, we condone the delay in filing the appeal and proceed to hear the same on merits.

4. At the outset, we noticed that the learned CIT(A) vide impugned order dated 22/03/2022, observed that in column No. 8 of Form No. 35, assessee in response to the question "*Where a return has been filed by the Appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full*", assessee has stated "*No*". Accordingly, the learned CIT(A) in absence of any response from assessee to various notices, held that appeal by the assessee cannot be admitted due to clear and mandatory provisions of section 249 (4) of the Act. As a result, learned CIT(A) vide impugned order rejected the appeal filed by the assessee.

5. From the perusal of Form No. 35, forming part of the appeal said, we notice that in reply to the question "*Where a return has been filed by the Appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full*", assessee has mentioned "*Tax due on the returned income paid in full*". We further find that the Assessing Officer in its order dated 28/12/2017 passed under section 143 (3) of the Act, has, in para 1 of its order, clearly noted the fact that return of

income was e-filed by the assessee on 29/09/2015 declaring total income at Rs. 2,94,31,360. Further, at internal page 4 of its order, the Assessing Officer computed the total assessed income of the assessee at Rs. 3,82,21,521, by making the addition of Rs. 87,90,161, to the aforesaid returned income of the assessee. Thus, in view of the above, we find no merits in the impugned order passed by the learned CIT(A) dismissing assessee's appeal on technical aspect, without correctly appreciating/examination of the basic facts available on record. As the learned CIT(A) has not dealt with the merits of the case and no findings have been rendered on grounds raised in appeal before it, therefore, we deem it appropriate to set aside the impugned order and restore the appeal to file of learned CIT(A) for *de novo* adjudication. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to both the parties. As a result, grounds raised by the assessee are allowed for statistical purpose.

6. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 20/10/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/10/2022

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai