

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(VIRTUAL COURT)

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 271 & 308/Asr/2017
Assessment Years: 2008-09, 2007-08

M/s Mars Educational Trust, Bijbehara, Anantnag, Kashmir [PAN: AADTM 7094D] (Appellant)	V.	Income Tax Officer, Anantnag Circle, Kashmir (Respondent)
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Appellant by	None (Written submission)
Respondent by	Sh. Radhey Shyam Jaiswal, Sr. DR

Date of Hearing	: 12.12.2022
Date of Pronouncement	: 20.12.2022

ORDER

Per Dr. M. L. Meena, AM:

These appeals have been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) J & K, Jammu dated 16.02.2017 in respect of AYs 2007-08 & 2008-09.

2. The assessee has raised the following grounds of appeal in ITA No. 271/Asr/2017:

“A. On the facts and circumstances of the case the Ld. CIT(A) has erred:-

- 1. in disposing off the appeal in haste without affording adequate and proper opportunity to appellant to present his case in absence of proper notices for hearings issued.*
- 2. In proceedings to dismiss the impugned appeal without considering inadequate services of notices on the appellant with regard to fixation of hearing of the case.*
- 3. In rejecting the appeal in totality and thereby confirming the arbitrary additions aggregating to Rs.10418686/= under various heads to the income of the appellant for the year which are neither based on facts of the case nor have any legal sanctity.*
- 4. In ignoring loss of Rs. 2158404.43 returned/filed by the appellant in response to notice U/s 142(1)/148 before disposing off the appeal.*

B. The appellant craves leave to add, modify, substitute or delete any of the grounds of appeal on or before the date of hearing of the appeal.”

3. The assessee has raised the following grounds of appeal in ITA No. 308/Asr/2017:

“A. On the facts and circumstances of the case the Ld. CIT(A) has erred:-

- 1. in disposing off the appeal in haste without affording adequate and proper opportunity to appellant to present his case in absence of proper notices for hearings issued.*

2. *In proceedings to dismiss the impugned appeal without considering inadequate services of notices on the appellant with regard to fixation of hearing of the case.*
 3. *In rejecting the appeal in totality and thereby confirming the arbitrary additions aggregating to Rs.8274854/= under various heads to the income of the appellant for the year which are neither based on facts of the case nor have any legal sanctity.*
 4. *The appellant craves leave to add, modify, substitute or delete any of the grounds of appeal on or before the date of hearing of the appeal.”*
4. None appeared for the assessee, however considering the written submissions filed by the assessee, presentation by the Ld. DR and material on record, we decided to hear the case and dispose of both the appeal on identical issue wherein the appellant challenged the impugned orders on account of principles of natural justice (adequate opportunity).
5. The appellant assessee alleged that the Ld. CIT (A) disposed off the appeals in haste without affording adequate and proper opportunity to appellant to present his cases in absence of proper service of notices for hearings and that appeals were dismissed the impugned appeal without considering the grievance of the assessee in view of non-services of notices on the appellant with regard to fixation of hearing of the case. The common written submissions are filed by the appellants and the written submission for AY 2007-08 reads as under:

- “1. That the Hon’ble Bench has been kind to fix the date of hearing of this case for today the 12th Dec., 2022.
2. That the present appeal is for seeking recall of Ex-parte order Dt. 16/02/2017 passed by the Learned CIT Appeals J&K, dismissed for non prosecution/appearance on the dates of hearing.
3. That the written submissions to support and prove that the non-appearance on the dates of hearing has not been willful or wanton, but due law & order issues and curfew imposed by the govt, authorities. “Letter of Deputy Commissioner Anantnag is attached”.
4. That appellant submits that its counsel is reported out of country and appellant being stationed at Anantnag Kashmir J&K, which is 450 Kms away from the place of hearing, as such begs to be exempted from in person hearing and appeal be decided on the basis of written submissions placed on record.

Prayer: -

In light of above submissions’ it is most respectfully prayed that this Hon’ble Bench may be pleased to exempt the appellant from in-person hearing and matter be decide the on its merits as per written submissions placed before the Hon’ble Bench.

6. The Ld. DR read out the impugned order and largely stands by the impugned order.

7. Heard the Ld. DR and have gone through the written submission of the appellants and material available on record. Admittedly, the Ld. CIT(A) dismissed the appeals ex-parte qua the assessee vide order Dt. 16/02/2017 for non-prosecution stating therein the reason of non-appearance on the dates of hearing. The appellant explains that the non- appearance on the

dates of hearing has not been willful or deliberate, but due to law & order issues and curfew imposed by the state govt, authorities. "Letter of Deputy Commissioner Anantnag is attached.

8. In view of the principles of natural justice, we accept the grievance of the assessee as genuine and accordingly, we consider it deem fit to restore back the matter to the Ld. CIT(A) to decide afresh with the direction to pass a speaking order after considering the written submission and evidences filed on record before him during the appellate proceedings, and to be filed in fresh proceedings after granting sufficient opportunity of being heard to the assessee. No doubt, the assessee shall cooperate in the fresh proceedings.

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

Order pronounced in the open court on 20.12.2022

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

(1)The Appellant

- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order