

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

Before Shri Sanjay Arora, Accountant Member and
Shri Sandeep Gosain, Judicial Member

ITA No. 58/Coch/2021
(Assessment Year: 2015-16)

Mohammed Haris Punnilath House Pappinivattom Village Mathilokam Post Thrissur 680685 [PAN: ATEPP6282E]	vs.	CIT (International Taxation) BMTC Building, 7th Floor 80ft Road, Koramangala Bangalore 560095
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(Appellant)

(Respondent)

Appellant by:	Shri B. Mohan, CA
Respondent by:	Shri Prasanth V.K., CIT-DR

Date of Hearing:	02.02.2023
Date of Pronouncement:	02.03.2023

ORDER

Per: Bench

This is an Appeal by the Assessee agitating the Order under section 263 of the Income Tax Act, 1961 ('the Act' hereinafter) by the Commissioner of Income Tax (International Taxation), Bangalore ('CIT' for short), dtd.30/03/2021 in respect of the assessee's assessment under section 143(3) of the Act dated 27/12/2017 for Assessment Year (AY) 2015-16. We observe an Intimation dated 31/03/2021 by the CIT on record informing the assessee the Document Identification Number (DIN) of the impugned order, as well as of the same being dated 29/03/2021. The same, to be regarded a part of the said order, shall, if necessary, be referred to in this order.

2. Vide the impugned order, the ld. CIT, i.e., the competent authority, has set aside the impugned assessment, directing the Assessing Officer (AO) to redo the assessment after making necessary enquiries on the several issues mentioned at para

2 (wrongly mentioned as para 3) of his order, after hearing the assessee. This is as the assessment in the first instance was made without doing so, rendering it for that reason erroneous and prejudicial to the interests of the Revenue.

3. Before us, the assessee's case, through his ld. counsel, Shri Mohan, CA, was that due and proper opportunity had not been allowed by the competent authority before passing the impugned order, so that the same is itself inflicted by non-observance of the principles of natural justice, rendering it infirm for that reason, relying toward the same on an affidavit dated 01/2/2023 by the assessee-appellant making averments to that effect. This was upon the Bench requiring during hearing on 30/1/2023 the parties to adduce evidence/s in respect of the claim for non-grant of opportunity, made per his Ground 1.

The Revenue would confirm the issue of notices of hearing on 04/03/2021 & 18/03/2021, further stating that the same as duly reflected in the assessee's account on the Revenue's portal, not disputed by Shri Mohan who, however, could not answer the query by the Bench, on perusing the affidavit, as to how could it be that no communication was received, either per email or through SMS, *qua* both the notices of hearing, i.e., 04/03/2021 (for 12/03/2021) and 18/03/2021 (for 23/03/2021) and, further, for both the primary and secondary addresses, with the intimation letters for both the notices of hearing being on record. This is as, being system driven, in case of system failure, as alleged, it would itself indicate non-transmission. Further, the very fact that SMS was admittedly received by the assessee's counsel, Shri P. Sudhakaran, CA, on 25/3/2021, and that emails by him were sent to the Department on 26/3/2021, the same itself shows the system was functioning, and well. As it appears to us, the assessee, a non-resident, based at Dubai, may have given a local mobile number, and not verified his email account, as would be the case with his CA, Shri Sudhakaran. Upon this, Shri Mohan would pray for remittance back to the file of the competent authority in the interest of justice.

4. We, in view of no representation by the assessee in the revision proceedings, are inclined to accept the said plea of Sh. Mohan. A cost of INR 10,000 (ten thousand is though being imposed on the assessee for not availing the opportunity provided by the Revenue, to be deposited with the Prime Minister's National Relief Fund by 31/3/2023, agreed to by Shri Mohan. Subject thereto, the impugned order is set aside for being made afresh, per a speaking order, in accordance with law, and after giving a reasonable opportunity of hearing to the assessee, who shall, in case of any change, suitably amend the communication address/es as registered. The competent authority shall, in case of non-representation, decide on the basis of the material on record. Needless to add that, in doing so, we have not made any observation on the merits of the impugned order or of the assessee's case. All the grounds of challenge to the revision of his assessment, permissible in law in facts and circumstances of the case, are open to the assessee. This of course excludes that *qua* non-grant of opportunity; the date of the impugned order, since set aside, etc., as they survive no longer.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: March 02, 2023
n.p./d.k.

Copy to:

1. The Appellant
2. The Respondent
3. The CIT - (IT), Bangalore
4. The Sr. DR, ITAT, Cochin
5. Guard File