

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1414/Del/2020
Assessment Year: 2015-16

Globus Construction P. Ltd. C/o The 3C Company, Tech Boulevard, Central Block, Plot No-6, Sec-127, Noida, UP 201301 PAN AAECG 8128 L	vs.	The DCIT, Circle 1, Ghaziabad
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Tiwari, Advocate
For Revenue :	Shri T. James Singson, CIT-DR

Date of Hearing :	22.02.2023
Date of Pronouncement :	17.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed by the assessee is directed against the order of CIT(A)-1, Noida dated 31.12.2018 for A.Y. 2015-16.

2. The learned counsel of the assessee pressing into service ground no. 2 of assessee submitted that the order of Ld. CIT(A) has

erred in passing ex-parte order which is bad in law and liable to set aside as while doing so the learned first appellate authority has disposed of the appeal ex-parte without considering the merit and on frivolous and arbitrary ground. He further contended that the Ld. CIT(A) has incorrectly alleged that no Income Tax return has been filed and nor the assessment order passed by the AO was filed before him and without appreciating the fact that the assessee filed return of income and copy of the assessment order on the Income Tax portal along with requisite document therefore the Ld. CIT(A) passed ex-parte order on wrong presumption and basis. The learned counsel also submitted that the Ld. CIT(A) has also erred in making and observations in the order that the appellant did not filed return of income u/s. 139 of the Act and making of assessment order u/s. 143(3) of the Act without ascertaining the facts of the case as a whole. The learned counsel, thus submitted that the order of Ld. CIT(A) may kindly be set aside deleting the additions uphold by him. Alternatively, the learned counsel submitted that the matter may kindly be restored to the file of Ld.

CIT(A) for proper adjudication of first appeal after considering the correct and relevant facts.

3. Replying to the above the learned CIT(DR) submitted that there was gross negligence and non-compliance on the part of assessee during first appellate proceedings. However he did not controvert that the assessee did file copy of return of income and relevant assessment order on Income Tax portal along with requisite documents. The Ld. CIT(DR), in all fairness, agreed to the contention of the learned counsel of the assessee that the assessee was not provided due opportunity of hearing by the learned first appellate authority during the appeal proceedings. The Ld. CIT(DR) also submitted that if it is found just and proper that the Department has no serious objection if the matter is restored to the file of Ld. CIT(A) for a fresh adjudication of appeal *denovo*.

4. In view of above submissions when undisputedly the assessee was not provided due opportunity of hearing by the Ld. CIT(A) then we find it proper and necessary to restore the matter to the file of Ld. CIT(A) to the first appellate stage for a fresh adjudication after allowing due opportunity of hearing to the assessee, without being

influenced with the earlier first appellate order and after being satisfied about the compliance of assessee pertaining to relevant provisions of filing of first appeal including compliance of sub section (4) of section 249 of the Act.

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

Order pronounced in the open court on 17.03.2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 17th March, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi