

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.1749/Del/2020
Assessment Year: 2016-17

Delite Buildwell Private Ltd.,
151-A, Club Road, Sainik Farms,
New Delhi – 110 062.

Vs. ACIT,
Circle-7(1),
New Delhi.

PAN: AA ECC7113K

(Appellant)

(Respondent)

Assessee by	:	Shri V.K. Jain, CA
Revenue by	:	Shri Ravinder Singh Yadav, Sr. DR
Date of Hearing	:	24.02.2023
Date of Pronouncement	:	29.03.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order of the CIT(A)-3,
New Delhi, dated 03.12.2019 for Assessment Year 2016-17.

2. Ground of appeal No.1 of the assessee reads as under:-

"1(a) That on the facts and in the circumstances of the case Ld. CIT (A) has erred in passing ex-parte order without serving notice dt. 14.08.2019, 23.09.2019 and 05.11.2019.

1 (b) That the Ld. CIT (A) has failed to place any evidence for issuing of notice dated 14.08.2019 for fixing date of hearing on 16.09.2019, notice dated 23.09.2019 for fixing date of hearing on 04.11.2015 and notice dated 05.11.2019 for fixing date of hearing on 02.12.2019. No such alleged notices were received by Appellant company at registered address as mentioned in Form No. 35 of appeal.

1(c) That the Ld. CIT(A) has totally ignored the fact that in Form 35 there is a specific column wherein mentioned that "whether notices / communication may be sent on email". The appellant company has stated "No". Thus the CIT(A) has ignored specific request of the appellant which is duly provided as per provisions of Income Tax Act / Rules in Form No. 35.

1(d) The Ld. CIT(A) has not sent any notice on email duly stated in Form No. 35 as vasudevinfrastructure@qamil.com duly verified by the appellant company from the email records. Thus the passing of ex parte order is bad in law and deserves to be quashed."

3. The Id. Assessee's Representative (AR) submitted that the Id. CIT(A) has passed ex-parte order without serving notice dt. 14.08.2019, 23.09.2019 and 05.11.2019 and thereby the impugned first appellate order has been passed in violation of principles of natural justice as no such alleged notices were received by the assessee company at the registered address as mentioned in Form No.35 of the appeal. The Id. AR submitted that the Ld. CIT (A) has ignored the specific request of the appellant which is duly provided as per the provisions of the Income-tax Act, 1961 and the Income-tax Rules stating in Form No.35. The Id. AR vehemently pointed out that the assessee has not sent any notice on e-mail duly stated in Form No.35 as vasudevinfrastructure@qamil.com duly verified by the appellant company from the email records. Thus the passing of *ex parte* order is bad in law and deserves to be quashed.

4. Replying to the above, the Id. Sr. DR strongly supported the orders of the authorities below and submitted that when despite due service of notice through e-mail, the assessee was not responding, the Id. CIT(A) was compelled to adjudicate the appeal *ex parte qua* the assessee. However, the Id. Sr. DR submitted that if it is

found just and proper, the Department has no serious objection in restoring the matter back to the file of the authorities below.

5. On careful consideration of the above submissions, we are of the considered view that the Id.CIT(A) has passed *ex parte* order by applying the order of the ITAT Delhi in the case of *CIT vs. Multiplan India Pvt. Ltd., 38 ITD 320* for non-prosecution. Further, from relevant part of the first appellate order, we note that the Id.CIT(A) has not adjudicated the grounds of the assessee raised in Form No.35, as per the requirement of sub-section (6) of section 250 of the Income-tax Act, 1961. Further, from a bare reading of assessment order, we also note that the AO issued notice u/s 143(2) of the Act and 143(1) of the Act and note that the said notices were served upon the assessee through ITBA system of e-assessment. However, in the subsequent part of assessment order, the AO made three additions in the hands of the assessee and we are unable to see any endeavour or effort from the AO to show cause the assessee by way of any further notice or order sheet entry calling it to submit its stand by filing reply and relevant documentary evidence on the issues picked up by the AO for making scrutiny assessment order. In our humble understanding, the assessee was not provided due opportunity of hearing before the authorities below. Therefore, the orders passed in violation of principles of natural justice cannot be held as sustainable and, thus, we set aside the same.

6. In view of the submissions made by the Id. Representatives of both the sides and factual position noticed by us, we find it just and proper to restore the issue to the file of the AO for a fresh adjudication, after allowing due opportunity of hearing to the assessee and without being influenced by the earlier assessment and first

appellate order. It is pertinent to mention that since we have restored the matter back to the file of the AO for a fresh *denovo* adjudication, the other issues of the assessee on merits are not being adjudicated particularly in a situation where the Id. AR has not placed any arguments thereon.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 29.03.2023.

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 29th March, 2023.

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Copy forwarded to :

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

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi