

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 6535/Del/2016
(Assessment Year : 2012-13)

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| M/s Deoria Realty Pvt. Ltd. 6, Community Centre, Saket, Delhi – 110 017 PAN No. AACCD 4222 A (APPELLANT) | Vs. | DCIT Circle – 7(1) New Delhi (RESPONDENT) |
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|-------------|----------------------------------|
| Assessee by | -None- |
| Revenue by | Shri Shankar Lal Verma, Sr. D.R. |

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| Date of hearing: | 29.03.2023 |
| Date of Pronouncement: | 29.03.2023 |

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 24.10.2016 of the Commissioner of Income Tax (Appeals)-3, Delhi relating to Assessment Year 2012-13.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company who electronically filed its return of income on 18.09.2012 for A.Y. 2012-13 declaring total loss of Rs.10,240/-. A notice u/s 274 r.w.s 271 of the Act was issued to the assessee but no compliance on the side of the assessee.

Thereafter, a show cause notice u/s 271B of the Act was issued on 07.09.2015, in response to which assessee filed its reply dated 14.09.2015. Thereafter penalty order passed u/s 271B of the Act vide order dated 28.09.2014.

4. Aggrieved by the order passed by AO, assessee carried the matter before CIT(A) who vide order dated 24.10.2016 dismissed the appeal on account of non-prosecution. Aggrieved by the order of CIT(A), Assessee is now in appeal before us and has raised the following grounds:

- 1) *“That order made u/s 250 of the Income Tax Act dated 24/10/2016 by the learned CIT (Appeals)-3 is unjust and unfair as order was passed ex-parte without giving sufficient opportunity to the assessee/appellant of being heard.*
- 2) *That by passing the Order ex-parte the Ld CIT (Appeals)-3 confirmed the order of AO 7(1) in entirety which is bad in law.*
- 3) *That the Ld AO has erred in fact and in law by imposing a penalty of Rs. 82,334/- u/s 271B of the Act which is unjust and unfair keeping in view the overall facts of the case and specially when the assessment order u/s 143(3) has been appealed against to CIT(A) on 16.04.2015 which inter alia covers the issue of penalty u/s 271B initiated by AO in its assessment order.*
- 4) *The appellant craves to add, delete or modify any grounds of appeal at the time of hearing of appeal.”*

5. The case file of the appeal reveals that the appeal was filed by the assessee in the year 2017. The matter was fixed for hearing for several times but there was no appearance on behalf of the assessee nor any adjournment application was filed. The matter was therefore adjourned for hearing for 29.03.2023 and the notice was issued through registered post.

6. On the present date also, there is no appearance from the side of assessee nor there is any request for adjournment. In such a situation, we proceed to dispose of the appeals *ex parte qua* the assessee and after hearing the Learned DR.

7. Before us, at the outset, Learned DR supported the order of AO.

8. We have heard the rival submissions and perused the material available on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced in the open court on 29.03.2023

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 29.02.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI