

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

BEFORE: SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.653/Mum/2023
(Assessment Years :2015-16)**

Diamond Concrete Structures Private Limited 101, Sunder Apartment, Nesbit Road, Mazgaon Circle, Mumbai-400010.	Vs.	Income Tax Officer-6(2)(1) Aaykar Bhavan, Maharshi Karve Road, Churchgate, Mumbai.
PAN/GIR No. AADCD6138N		
(Appellant)	..	(Respondent)

Assessee represented by	None
Revenue represented by	Shri Jogendra Singh, Sr. AR
Date of Hearing	09/05/2023
Date of Pronouncement	09/05/2023

ORDER

PER KULDIP SINGH (J.M):

The Appellant, Diamond Concrete Structures Private Limited (hereinafter referred to as the 'assessee') by filing the present appeal, sought to set aside the impugned order dated 01.01.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment order for Assessment year 2015-16 on the ground inter-alia that:-

"1. The Learned Assessing Officer ("Ld AO") erred in law and in facts of the case in assessing the total income at Rs 43,67,801/- as against the returned income of Rs 6,07,130/- only and the Ld

Commissioner of IT (Appeals) erred in sustaining the same by not appreciating the facts properly.

2. The Ld AO erred in law and facts of the case by passing an order u/s 143(3) dated 27.12.2017 of the Income Tax Act, 1961 ("IT Act") which is bad in law as the facts have been wrongly interpreted by him.

3. The Ld AO erred in law and facts of the case by adding the retention money of Rs 37,60,671/-.

4. The Ld AO erred in charging interest u/s 234B and in initiating the penalty proceeding u/s 271(1)(c) of the IT Act.

5. The appellant craves leave to add, alter, substitute, amend or modify all or any of the grounds of appeal."

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are: The assessee company is into to the business diamond Concrete Structures. During the Scrutiny proceedings, the AO noticed that the assessee has provided contractual work and shown revenue from operations of Rs.3,06,31,275/- and the book profit was shown at Rs. 17,68,710/-. At the same time turnover as per books of accounts was Rs. 3,06,31,275/- whereas the turnover as per Form 26AS was Rs. 3,37,53,891/-. Reconciliation was not filed by the assessee. Declining contention raised by the assessee the AO proceeded to hold that the Revenue to extent of Rs. 37,60,671/- has been short offered, whereas all the expenses are booked, and consequently the Assessing Officer made an addition of Rs. 37,60,671/- to the total income of the assessee and thereby framed assessment at Rs. 43,67,800/-.

3. Notice to the appeal was issued to the assessee and in response thereto the assessee put and appearance on 09.05.2023 and moved an

application for adjournment, which was rejected in view of the facts of the case. The Bench has decided to dispose off the appeal on the basis of material available on record with the assistance of the Id. DR for the Revenue as the impugned order has been passed ex-parte by Ld. CIT(A) without going into the merits of the case.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the disallowance by dismissing the appeal filed by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A), assessee has come up before the Tribunal by way of filing the present appeal.

5. I have heard the Ld. Authorised representative of the parties to the appeal, perused the order passed Ld. Lower Revenue Authorities and material available on record in light of the case law settled thereto.

6. At the very outset, it has come to the notice of the Bench that impugned order is passed by Ld. CIT(A) at back of the assessee without providing opportunity of being heard and without deciding the case on merits, which fact is not controverted by the Id. DR for the Revenue.

7. On perusal of the impugned order passed by Ld. CIT(A) it is proved that the present appeal has been decided by the Id. CIT(A) at the back of the assessee due to non-prosecution.

8. No doubt in para 4 of the impugned order, the Id. CIT(A) recorded that 5 notices were issued to the assessee but the assessee has not availed of

the opportunity to file the submission. First of all the Id. CIT(A) has not recorded his satisfaction if the said notices were served upon the assessee nor the appeal has been disposed off on merits rather the same has been dismissed due to non-prosecution by the assessee. To advance cause of justice and to stop the multiplicity of the proceedings I am of the considered view that one more opportunity is required to be given to the assessee, hence the impugned order passed by the Id. CIT(A) is hereby set aside to be decided afresh by the Id. CIT(A) after providing adequate opportunity of being heard to the assessee.

9. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09/05/2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai; Dated 09/05/2023
Santosh, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Sr. Private Secretary /
Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
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1.	Draft dictated on	10/05/2022		Sr.PS
2.	Draft placed before author	11/05/2023		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		