

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

**BEFORE SH. SAKTIJIT DEY, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.2696/Del/2022
Assessment Year: 2013-14

Taksonz Developers and infrastructure Ltd 4348/4C, Ansari Road, Darya Ganj, New Delhi- 110001 PAN No.AAACT6124D (APPELLANT)	Vs	ITO Ward- 25 (1) New Delhi (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	12/06/2023
Date of Pronouncement:	12/06/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 08.09.2022 by NFAC, Delhi pertaining to A.Y.2013-14.

2. The grievance of the assessee read as under :-

1. *The Learned CIT (A) has erred in passing an ex parte order without giving reasonable opportunity to the appellant.*
2. *That on the facts, circumstances of the case and in law, the Worthy CIT(A) through his order dated 08.09.2022 has erred in passing that order in contravention of the provisions of section 250(6) of the Income Tax Act, 1961 without providing the opportunity of being heard.*
3. *The assessing officer did not consider the order of the fellow CIT (A) order*

dated 22.01.2018 for the quantification of the demand. Ld. CIT (A) also did not consider the appeal effect on statutory right of the assessee for the indexation of the capital asset sold as adjudged by the worthy CIT(A) vide its original order dated on 22.01.2018.

4. *Ld. CIT (A) erred in confirming the penalty even though demand on the merit is reduced to nil.*

5. *That on law, facts and circumstances of the case, Learned CIT (A) has erred in imposition of penalty of Rs.45,49,953/- u/s 271(l)(c) of the Act on the appellant on the impugned disallowance of exemption claimed on capital gain. The Ld. CIT (A) has not taken into consideration the fellow CIT (A) order. Thus, the order of CIT (Appeal) is the conclusive evidence that the assessee company has not submitted inaccurate particulars of income and has disclosed all the facts and particulars in the financial statements as well as in return of income. Neither Ld.A.O nor CIT(A) have pointed out as to what inaccurate particulars have been submitted.*

6. *Learned Ld. AO in its original order has erred in making addition of Rs. 1,40,87,419/- by holding that exemption claimed u/s 2(14)(iii) of the Income Tax Act. But did not give the assessee company the indexation benefit and the tax to be levied on the long-term capital gain derived thereon after order of CIT (A) 8s'thus no appeal affect has been given despite the order of CIT(A).*

7. *That CIT (A) has also erred on issue of penalty proceeding following had also remarks that this issue is "premature and beyond the purview of appeal u/s 246 A of the act, the same is dismissed".*

8. *The order of Commissioner of Income Tax (Appeals) on the above issues raised in this appeal may be set aside and that matter may be remanded back to Assessing Officer to provide the appeal affect due to order of CIT(A) which has allowed the captioned asset as capital asset instead of stock in trade. Thus assessee is eligible for indexation on this asset.*

9. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

3. None appeared on behalf of the assessee inspite of notice, therefore, we decided to proceed exparte.

4. The DR was heard at length. Case records carefully perused.
5. Briefly stated the facts of the case are that the assessee filed its return of income declaring income of Rs.1,73,190/- which was selected for scrutiny assessment through CASS and accordingly statutory notices were issued and served upon the assessee. The returned income was assessed at Rs.1,42,60,610/-.
6. Penalty proceedings were separately initiated u/s 271 (1) (c) of the Act which culminated into the levy of penalty of Rs.45,49,953/- .
7. The levy of penalty was agitated before the CIT(A) who dismissed the appeal by holding as under :-

“5. The appellant has been given several opportunities to represent its case on 08.08.2019, 13.12.2019, 31.12.2020 and 10.08.2022. In fact till date nothing has been heard from the appellant on the questions raised. No explanation whatsoever has been offered by the appellant to justify its claims. Thus, it appears that the appellant is not interested in proceeding with the appeal filed. Therefore, having considered the facts of the case and evidences available on record, the additions made by the Assessing Officer is sustained, while dismissing all grounds of appeal.”

8. We have given a thoughtful consideration to the findings of the CIT(A). We are of the considered opinion that the CIT(A) ought to have dismissed the appeal of the assessee on merits of the case. Therefore, in the interest of justice we restore the appeal to the files of the CIT(A). The CIT(A) is directed to decide the appeal on merits of the case after affording a reasonable and adequate opportunity of being heard to the assessee.

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

10. Decision announced in the open court on 12.06.2023.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .06.2023

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi