

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.1169/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2012-13)

Saffron Inc B/7, Shivkrupa Apartment, Ground Floor, Old Nagardas Road, Andheri East, Mumbai-400069.	बनाम/ Vs.	ITO-31(1)(1) Kautilya Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABEFS2784A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Sumit Mantri
Revenue by:	Shri Suresh D. Gaikwad (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 10/07/2023

घोषणा की तारीख /Date of Pronouncement: 31/07/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax/NFAC, Delhi dated 09.02.2023 for assessment year 2012-13.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) dismissing the appeal ex-parte order without giving an opportunity of hearing to the assessee.

3. At the outset, the Ld. AR of the assessee submitted that assessee could not appear/present submission before the Ld. CIT(A) because of non-receipt of notices of hearing, which caused the non-appearance before the Ld. CIT(A). In order to buttress this submission, assessee has filed an affidavit sworn by the partner [of the firm/assessee] Shri Vikas Naresh Jain wherein it has been stated that the email id furnished before the Ld. CIT(A) was girdhariagarwal1000@gmail.com and, since the email Id was dis-functional due to technical snag,



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assessee did not receive the notices [as asserted to have been forwarded by the Ld. CIT(A)]. Therefore, according to the Ld. AR, the assessee was in the dark as to the issuance of notice of hearing by Ld. CIT(A) and could not present its submission on the date of hearing and so, the Ld. CIT(A) has passed an ex-parte order without going into the merits of the grounds of appeal raised by the assessee. And therefore, pleaded that impugned ex-parte order may be cancelled and the appeal restored back to the file of the Ld. CIT(A) for hearing on merits.

4. Per contra, the Ld. DR opposes the request of the Ld. AR and submits that the Ld. CIT(A) has given four (4) opportunities to the assessee, and since it failed to appear/furnish submissions/documents, the assessee should not be given second innings.

5. We have heard both the parties and perused the records. We note that the impugned order of the Ld. CIT(A) is an ex-parte order and not passed on merits. The Ld. CIT(A) has noted to have issued four (4) notices; and since there was no compliance on the part of the assessee, has dismissed the grounds of appeal without going into the merits of the grounds raised by the assessee. Before us, the assessee has filed an affidavit of the partner of the assessee firm which shows that the assessee did not receive the notices due to the mal-functioning of the computer/email id furnished before the Ld. CIT(A). The assessee before us has given a new email Id in Form-36 vikasjain8238@gmail.com and submitted that email Id girdhariagarwal1000@gmail.com was non-accessible [which was the email Id given before Ld. CIT(A)]. Thus, we find that there was a reasonable cause for assessee not receiving the notice of hearing. In



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such a scenario, we are inclined to set aside the impugned order of the Ld. CIT(A) and restore the appeal back to the file to the Ld. CIT(A) with a direction to adjudicate the grounds of appeal raised by the assessee in accordance to section 250(6) of the Income Tax Act, 1961 (hereinafter “the Act”) law and the assessee is directed to file written submission/relevant documents to substantiate/ support the grounds of appeal raised before the Ld. CIT(A) and request for hearing in accordance to law.

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

Order pronounced in the open court on this 31/07/2023.

Sd/-

(AMARJIT SING)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 31/07/2023.

Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai