

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
आअसं. 1247/मुं/2023 (नि.व. 2010-11)
ITA NO.1247/MUM/2023 (A.Y.2010-11)

Kshir Sagar Constructions Co. Pvt. Ltd.

C-20, Bharat Nagar, Grant Road,

Mumbai-400007.

PAN: **AAACK1671N**

..... अपीलार्थी / Appellant

बनाम Vs.

ITO-5 (2)(1),

Mumbai.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Himanshi Jain
प्रतिवादी द्वारा/ Respondent by : Sh. Prakash Kishinchandani, Sr. DR
सुनवाई की तिथि/ Date of hearing : 10/08/2023
घोषणा की तिथि/ Date of pronouncement : 10/08/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 14.03.2023, for the Assessment Year 2010-11.

2. A perusal of the impugned order reveals that the CIT(A) has dismissed the appeal of assessee in-limine for non-prosecution. The CIT(A) in para-5.1 of the impugned order has tabulated the dates fixed for hearing of the appeal, the dates of issue of notice and the remarks indicating that on none of the dates the assessee responded to the notices issued by the CIT(A). The table shows that the CIT(A) had fixed the appeal for hearing on four occasions and had issued notices

for the same. The assessee has not responded to any of the said notices, however, it is not emanating from the impugned order the mode of issuance of notices and whether the notices issued by the CIT(A) were served on the assessee. It is not merely issuance of notice but the service of notice which is necessary for the assessee to know about the proceedings.

3. Be that as it may, the CIT(A) was duty bound to decide the appeal on merits. The provisions of the Act does not empower CIT(A) to dismiss appeal for non-prosecution **[Re: CIT (Central), Nagpur Vs. Premkumar Arjundas Luthra (HUF), 69 taxmann.com 407 (Bom.)]**

4. The impugned order is set-aside and appeal of the assessee is restored to the CIT(A) for adjudication on merits after affording reasonable opportunity of hearing/making submissions to the assessee, in accordance with law.

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

Order pronounced in the open court on **Thursday**, the 10th day of August, 2023.

Sd/-
(MS. PADMAVATHY S)

Sd/-
(VIKAS AWASTHY)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/Mumbai, दिनांक/Dated: 10/08/2023
SK, Sr. PS

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai