

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(VIRTUAL COURT)

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 244/Asr/2023
Assessment Year: 2013-14

M/s Oracle Constructions
197, Housing Colony,
Rawalpura Sant Nagar,
S.O., Srinagar-190005
Jammu and Kashmir

[TAN: AMRO 10916D]

(Appellant)

Vs. Income Tax Officer (TDS),
Srinagar

(Respondent)

Appellant by : Sh. Sudhir Sehgal, AR
Respondent by : Sh. Manoj Aggarwal, Sr. DR
Date of Hearing : 11.09.2023
Date of Pronouncement : 13.09.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal is filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 26.06.2023 in respect of Assessment Year: 2013-14.

2. At the outset, the Id. counsel for the assessee submitted that the Id. CIT(A) has rejected the appeal ex-parte qua the assessee by stating that the he is not interested in pursuing the appeal and hence, the appeal of the appellant is dismissed for non- prosecution vide para 7.2 of the impugned order.

3. The Id. AR further submitted that the assessee has filed two appeals before the Id. CIT(A) NFAC, Delhi against the order of ITO (TDS), Srinagar dated 30.03.2021 wherein in one appeal the financial year was mentioned as 2013-14 due to some inadvertent error in place of financial year 2012-13 which has been adjudicated by the Id. CIT(A) and the subject matter of the appeal before the Tribunal. Subsequently, the mistake was rectified by correcting the financial year as 2012-13 by filing the appeal again in Form No. 35 13.09.2021 before the Id. CIT(A) NFAC, Delhi against the said order of the ITO (TDS), Srinagar dated 30.03.2021. A copy of acknowledgement filed on record (APB Pg. No. 10). The counsel has requested that on filing a revised Form No. 35 by correcting the financial year, the old appeal memo get merged with the new appeal memo in Form No. 35. Further, the Id. CIT(A) has adjudicated the old appeal ex-parte qua the assessee in violation of principles of natural justice, and therefore, he requested that the

matter may be remanded back to the file of the Id. CIT(A) to adjudicate the appeal along with the correct appeal memo filed in Form No. 35 by rectifying the mistake in financial year by as 2012-13. The counsel has contended that although the appellant has received notices in respect of both the appeals and submissions were also filed on 10th July, 2023 along with paper book (APB Pg. 47) in respect of appeals filed, however, the last notice was sent on portal could not be excess by the assessee due to some inadvertent error. He prayed that the matter may be remanded back to the Id. CIT(A) to adjudicate the two appeal together by way of merger being assessment arising out of the same order of the ITO (TDS), Srinagar, dated 30.03.2021. The counsel undertakes to cooperate in the fresh proceedings before the Id. CIT(A) NFAC, Delhi by filing requisite information and reconciliation of the two appeal memos on similar grounds of appeal filed in respect of the same order of the ITO (TDS), Srinagar as above.

4. Per contra, the Id. DR has supported the impugned order by contending that several opportunities have been granted to the appellant assessee, however, we failed to rebut the contention of the appellant on facts of the case that the two appeals were filed by the appellant and that

the duplicate appeal was filed rectifying the mistake in writing financial year in respect of the same order of the ITO (TDS), Srinagar dated 30.03.2021.

5. We have heard the rival contentions, perused the material on record and the impugned order. Admittedly, the appellant has filed two appeals against the same order of ITO (TDS), Srinagar dated 30.03.2021 on 07.09.2021 and another appeal on 13.09.2021. It is contended by the Id. AR that the Id. CIT(A) has passed the order ex-parte qua the assessee against the appeal filed on 07.09.2021 by mentioning a wrong financial year as 2013-14 in place of 2012-13 due to some inadvertent error by the technical staff of the counsel of the assessee. In our view, the assessee deserves to be granted one more opportunity of being heard in view of the principles of natural justice before the Id. CIT(A) who has rejected the appeal by passing an order ex-parte qua the assessee. Under the circumstances, we consider it deem fit to remand back the matter to the file of the Id. CIT(A) to adjudicate the appeal afresh along with the another appeal filed on 13.09.2021 wherein the appellant has mentioned the correct financial year in respect of the same order of the ITO (TDS), Srinagar dated 30.03.2021, after considering the submissions already filed by the appellant on record and to be filed during the fresh proceedings. No doubt, the

appellant shall cooperate in the fresh proceedings before the Id. CIT(A). Accordingly, the appeal of the assessee is remanded back to the Id. CIT(A) for fresh adjudication as per law.

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

Order pronounced in the open court on 13.09.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

Sd/-
(Dr. M. L. Meena)
Accountant Member

True Copy

By Order