

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 719/KOL/2022
Assessment Year: 2012-2013**

***M/s. Nilkanth Heights Pvt. Limited.....Appellant
10, Decres Lane, Suite No. 101,
Kolkata-700069***

[PAN: AADCN4176C]

-Vs.-

***Income Tax Officer,.....Respondent
Ward-3(1), Kolkata,
Aayakar Bhawan, 4th Floor,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

Shri S. Saha, Manager, appeared on behalf of the assessee

Shri B.K. Singh, JCIT (Sr. DR), appeared on behalf of the Revenue

Date of concluding the hearing : October 09, 2023

Date of pronouncing the order : October 10, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 2nd September, 2022 passed for A.Y. 2012-13.

2. The order of the ld. CIT(Appeals) is a very brief order and the relevant part reads as under:-

“The appellant was sent notices of hearing/submission on 22.01.2021, 15.11.2021 & 22.08.2022. There were adjournment requests only on 09.12.2021, 21.12.2021 & 07.04.2022, but no reply/submission was received from the appellant afterwards. Therefore, it seems appellant has no interest in pursuing the appeal. Hence, I do not find any reason to interfere with the order passed by the assessing officer. In sum, appeal is dismissed”.

3. A perusal of the above order would suggest that it is not in consonance with the mandate given in sub-section (6) of section 250. Sub-Clause (6) would contemplate that the ld. CITA would state the points in dispute and thereafter record reasons in support of his conclusion on those points. In the present case, ld. CIT(Appeals) failed to record any reason on the points, which are discussed by the ld. Assessing Officer. It is also observed that a perusal of the above order would suggest that the last notice was issued on 07.04.2022 but the impugned order of dismissal has been passed on 02.09.2022, i.e. almost five months of the alleged notice given to the assessee, which was not attended. The ld. CIT(Appeals) ought to have given a notice to the assessee, if there was such a gap. The ld. CIT(Appeals) was bound to decide the appeal on merit even if it is an *ex-parte* order, therefore, it is not sustainable. We, therefore, set aside the order of ld. CIT(Appeals) and remit this issue to the file of ld. CIT(Appeals) for adjudication on merit. The ld.

CIT(Appeals) would issue fresh notice of hearing to the assessee.

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

Order pronounced in the open Court on October 10, 2023.

**Sd/-
(Girish Agrawal)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 10th day of October, 2023

*Copies to : (1) M/s. Nilkanth Heights Pvt. Limited,
10, Decres Lane, Suite No. 101,
Kolkata-700069*

*(2) Income Tax Officer,
Ward-3(1), Kolkata,
Aayakar Bhawan, 4th Floor,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre, Delhi,*

*(4) Commissioner of Income Tax ,
(5) The Departmental Representative
(6) Guard File*

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.