

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

**ITA Nos. 251&451/Coch/2023&
SA Nos. 52&87/2023**
(Assessment Year:2013-14)

Darshana Communications Pvt. Ltd. 1/3777A, Orchid Garden Bilathikulam, Eranjipalam Kozhikkode 673006 [PAN:AADCD7468F]	Vs.	Asst. CIT, Circle – 1(1) Kozhikkode
(Appellant)		(Respondent)

Assessee by:	Shri Narayanan Potty, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	09.10.2023
Date of Pronouncement:	09.10.2023

ORDER

Per Bench

This is a set of two Appeals by the Assessee, agitating the disposal of it's appeals contesting it's assessment under section 143(3) of the Income Tax Act, 1961 ('the Act') for Assessment Year (AY) 2013-14 dated 22.03.2016 and rectification thereof u/s.154 of the Act dated 15.06.2016, by the Commissioner of Income Tax (Appeals) (NFAC, Delhi) vide its orders dated 08.02.2023 and 08.05.2023 respectively.

2. The assessee's case before us was of denial of proper opportunity of hearing before it by the learned CIT(A), the first appellate authority under the Act, who has, in view of the non-attendance by the assessee, inferred non-prosecution of its appeal/s by the assessee, and not adjudicated on merits, disposing the same *in limine* per non-speaking order/s.

3. We have heard the parties, and perused the material on record. The assessee's claim of non-grant of proper opportunity of hearing by the Id. CIT(A) is wholly unsubstantiated, which accordingly cannot be accepted in view of the definite finding of several notices of hearing, spanning over a two-year period, for both the appeals under reference, having been served. The assessee was before us unable to explain as to how, when the e-mail Id furnished by it for the purpose of communication through Form 35, i.e., jbs.clt@gmail.com, was, as claimed, operational, that it did not receive the said notices. Even as it does, we strangely observe, the impugned orders, and on the very date/s they were passed.

4. At the same time, there is no gain saying that the impugned orders, being non-speaking orders, do not satisfy the mandate of section 250(6) of the Act, and are thus not valid in law. For each of the points arising for determination, respective cases of both the sides, is to be followed by reasoned orders, taking into consideration the material on record – for which the first appellate authority can call the assessment record of the assessee, and decided issuing definite findings, both on fact and in law. It is only this that shall inform the appellate authority reviewing it's order, on challenge, it's basis, and opine thereon. As explained time and again by the Hon'ble Apex Court, reason is the soul of a judicial order; a nonspeaking order rather not qualifying to be one (*Pr. CIT v. Bajaj Herbals (P.) Ltd.* [2022] 443 ITR 230 (SC)). The same is not sustainable in law. As regards rectification, the same is only towards application of the correct tax rate to the addition u/s. 68 of the Act and, thus, consequential, even as, without doubt, the assessee's case, if any, is to be considered and dealt with.

5. In view of the foregoing, we only consider it proper under the circumstances to, setting aside the impugned orders, remit the matter back to the file of the first appellate authority for consideration afresh, and together, of the assessee's appeals on merits. The learned counsel for the assessee also requested for a change in the e-mail

ID at which the hearing notices may be sent, i.e., darshanatv@gmail.com, as finds mention in Form 36, the Appeal Memo before the Tribunal. The hearing notices be accordingly sent at the said email id, with the assessee also taking steps for substitution of the same with first appellate authority. Needless to add, non-cooperation by the assessee would entitle the appellate authority to draw adverse inference/s as admissible in law, whose decision though has to be on merits of the case. The appeals having been disposed of, the assessee's stay applications become infructuous. We decide accordingly.

6. In the result, the appeals filed by the assessee are allowed for statistical purposes and the stay applications are dismissed as infructuous.

Order pronounced in the open court on October 09, 2023 on the conclusion of the hearing.

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: October 09, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The CIT concerned
4. The DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.