

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 2217/Mum/2023 (A.Y. 2011-12)

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| M/s. Gem Construction Flat No. 409, 410, Bldg. A1 1 Plot Sai Shradha CHS Linking Road Extension Santacruz West Mumbai-400 054. PAN : AAJFG2458D (Appellant) | Vs. | ITO, Ward 22(1)(5) Mumbai. (Respondent) |
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| Assessee by | Miss Kiran Vadher |
| Department by | Shri Ram Prakash Rastogi |
| Date of Hearing | 30.10.2023 |
| Date of Pronouncement | 31.10.2023 |

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 26-04-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2011-12. The assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeal of the assessee in limine without adjudicating the issues urged before him on merits.

2. The facts relating to the case discussed in brief. The assessee is engaged in the construction business and the assessment was completed in his hands for the year under consideration u/s 143(3) r.w.s 147 of the Act by making various additions. The assessee challenged the assessment order by filing appeal before Ld CIT(A). Since the assessee did not respond to the notices issued by the first appellate authority, he dismissed the appeal in limine without deciding the issues on merits. Assessee is aggrieved.

3. At the outset, the learned counsel appearing for the assessee submitted that the learned CIT(A) has dismissed the appeal in limine, without deciding the issues urged before him on merits on the reasoning that the assessee did not respond to the notices issued by him. The Learned AR submitted that no physical notice was issued to him. All the notices were posted in the income tax portal and the assessee was not aware of those notices. Accordingly he prayed that, in the interest of natural justice, all the issues may be restored to the file of the learned CIT(A) for adjudicating them on merits.

4. We heard learned DR and perused the record. We noticed that the learned CIT(A) was constrained to dismiss the appeal in limine, since the assessee did not respond to the notices issued by him. It is the submission of learned AR that the notices were issued in the income tax portal and hence the assessee was not aware about them. Accordingly, it was submitted that the assessee could not comply to the notices issued by the learned CIT(A).

5. In our view, the Ld CIT(A) could have decided the issues on merits on the basis of material available on record. In any case, in the absence of proper hearing given to the assessee, there is violation of principles of natural justice. Accordingly, we are of the view that, in the interest of natural justice, the assessee may be provided with one more opportunity to present his case properly before the learned CIT(A).

6. Accordingly we set aside the order passed by the learned CIT(A) and restore all the issues to his file for adjudicating them on merits, after affording adequate opportunity of being heard to the assessee. We also direct the assessee to be vigilant and fully cooperate with the learned CIT(A) for expeditious disposal of the appeal.

7. In the result, the appeal filed by assessee is treated as allowed for statistical purposes.

Order pronounced in on 31.10.2023.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 31/10/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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