

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.3304/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2013-14)

Landmark Realty 501, Harikrupa, Opp. Shri Sagar Hotel L. T. Road, Borivali (W), Maharashtra- 400092.	बनाम/ Vs.	DCIT, Central Circle-6(4) Room No.1925, Air India Building, Nariman Point, Maharashtra-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFL8005H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Subodh Ratnaparkhi	
Revenue by:	Shri Harmesh Lal (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 01/01/2024

घोषणा की तारीख /Date of Pronouncement: 12/01/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal filed by the assessee, who is the appellant and DCIT, Central Circle-6(4) is the respondent. Instant appeal arise from the order dated 18.07.2023 passed by the Commissioner of Income Tax (Appeals)-54, Mumbai [*Corrigendum order dated 23.08.2023 wherein Ld. CIT(A) corrected the mistake apparent on the face of the record that assessment order for AY. 2013-14 was passed on 31.03.2013 instead of correct date 30.03.2016*]. Subject matter of the Income Tax Appeals relates to the AY 2013-14.

2. At the outset, the Ld. AR of the assessee pointed out that the impugned order of the Ld. CIT(A) is an *ex-parte* order without hearing the assessee. Therefore, according to him, there is *per-se* violation of the natural justice. To buttress this point, he drew our attention to para



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no. 5 of the impugned order wherein the Ld. CIT(A) took note of the fact that the despite issue of notices conveying the date of hearing, the assessee failed to comply with the requirements mentioned in the notices and therefore, he was pleased to dismiss the appeal of the assessee. The Ld. AR submitted that the Ld. CIT(A) erred in drawing such a conclusion because the assessee was never served with a copy of the notices. He pointed out that as per Form -35 (*refer page no. 11 to 22 of the appeal-set*) the e-mail address given by assessee is anup007@hotmail.com and the Ld CIT(A) had issued the first notice on 20.05.2022 (*fixing the date of hearing 31.05.2022*) to the said e-mail id, pursuant to which the assessee requested for adjournment which fact has been acknowledged by the Ld. CIT(A). However, thereafter, the Ld CIT(A) issued other notices to rdlukad@gmail.com and not to anup007@hotmail.com. Thus, according to the Ld. AR, the assessee was not aware of the notices/date hearing of the appeal and so, couldn't respond to notices issued by Ld CIT(A). We find that other than the first notice, no other notices were sent to the e-mail id given by assessee in the Form-35. Therefore, there is no question of assessee answering/responding to notices which were not served upon it. Thus, we find force in the submission of the Ld. AR of the assessee that in the absence of notice, assessee cannot be penalized for not responding to notices of Ld CIT(A). Therefore, Ld. CIT(A) erred in holding that the assessee was not interested in pursuing the appeal. Moreover, we note that the Ld. CIT(A) has not decided the appeal as required under sub-section (6) of section 250 of the Income Tax Act,



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1961 (hereinafter “the Act”). Therefore, we are inclined to set aside the impugned order and consequently, the appeal is restored back to the file of Ld. CIT(A) to pass an order in accordance to sub-section (6) of section 250 of the Act. And the assessee is directed to be diligent and file the requisite documents called for by the Ld. CIT(A) and request for hearing if it desires as per Rules, and the Ld. CIT(A) to pass orders in accordance to law after hearing the assessee.

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

Order pronounced in the open court on this 12/01/2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/01/2024.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai