

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

Before Shri Sanjay Arora, Accountant Member and  
Ms. Kavitha Rajagopal, Judicial Member

**ITA Nos. 40 to 45/Coch/2023**  
(Assessment Year: 2007-08 & 2012-13 to 2015-16)

Focuz Corporation Pvt. Ltd. N H Bye Pass, Edapally Kochi 682024 [PAN: AAACB9529J]	vs.	Asst. CIT, Circle - 1(1) Kochi
(Appellant)		(Respondent)

Appellant by:	----- None -----
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	15.02.2024
Date of Pronouncement:	15.02.2024

**ORDER**

Per: Sanjay Arora, AM

This is a set of six Appeals by the Assessee agitating the dismissal of it's appeals by the Commissioner of Income Tax (Appeals), Department of Income Tax [CIT(A)], contesting it's assessments under section 143(3) of the Income Tax Act, 1961 (hereinafter "the Act") for Assessment Years (AYs.) 2007-08 and 2012-13 to 2015-16, vide his separate orders dated 15.11.2022.

2. A perusal of the record shows that while the assessee was represented before the Assessing Officer (AO), there was no representation before the Id. CIT(A), who accordingly dismissed the appeals *in limini*.

3. We have heard the parties, and perused the material on record.

Even as we depreciate the assessee's conduct in not representing before the first appellate authority, who lists various dates on which opportunity of hearing was granted to the assessee, sending notices at the email address provided by the

appellant, as well as before us, whereat again it was extended three opportunities, there is no gain saying that the impugned order/s is not maintainable in law, which, per s. 250(6) of the Act envisages a speaking order. True, there was no representation before him, but the mandate of the law, which is clear, is to be observed irrespective. Non-representation before him would only imply that no improvement stands made by the assessee in it's case before the assessing authority, so that the first appellate authority has to necessarily decide on the basis of the assessee's case as before the assessing authority, considering the material furnished along with, by stating the points arising for determination, and his decision/s thereon along reason/s/ therefor. The Id. CIT(A) ought to have therefore in our view called for the assessment record, noting the assessee's case before the AO on each of issues raised in the appeal, and decide upon due application of mind on the opposing cases before him.

Under the circumstances, we accordingly consider it fit and proper to, setting aside the impugned orders, restore the matter back to the file of the Id. CIT(A) for deciding on merits in accordance with law, issuing clear findings of fact. Needless to add, reasonable opportunity for hearing would be allowed to both the parties before him and, in the event of the same being not availed, inferences as admissible in law would stand to be drawn.

We decide accordingly.

4. In the result, the assessee's appeals are allowed for statistical purposes.

*Order pronounced in the open court at the conclusion of the hearing.*

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: February 15, 2024  
n.p.

Copy to:

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

By Order

Assistant Registrar  
ITAT, Cochin