

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA No. 4184/Mum/2023
Assessment Year : 2013-14

Bhagwan Computronics Private Limited, 1005, Raheja Centre, Nariman Point, Mumbai 400 021. PAN AAATT3440K (Appellant)	Vs.	Income Tax Officer 3(1)(2), Mumbai (Respondent)
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Appellant By : Ms. Simoni Chouhan
Respondent By : Shri Ashok Kumar Ambastha

Date of Hearing : 23.04.2024	Date of Pronouncement: 23.04.2024
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ORDER

Per Justice (Retd.) C V Bhadang :

This appeal by the assessee takes exception to the order dated 25.10.2023 passed by the CIT(A), NFAC, Delhi, which in turn arose out of order dated 14.03.2022 passed by the Assessing Officer (AO) for assessment year 2013-14.

2. For the limited purpose of disposal of the present appeal, it is not necessary to set out the facts in details, in as much as the order passed by the learned CIT(A) is an exparte order. Suffice it to mention that the AO vide order dated 14.03.2022 had made an addition of Rs.1,02,19,760/- on account of alleged bogus transaction of sale and purchase of shares at

NSEL. The appellant challenged the said order before the CIT(A). A perusal of the impugned order passed by the learned CIT(A) indicates that according to the CIT(A), the appellant failed to appear, or to prosecute the appeal inspite of notices dated 19.09.2022, 15.12.2022 and 06.10.2023. The said notices were issued through ITBA portal. In that view of the matter, the learned CIT(A) has found that the appellant is not interested in pursuing the appeal and proceeded to dismiss the appeal. A perusal of para 3.1 onwards of the impugned order shows that the learned CIT(A) has not adverted to the merits, notwithstanding the non- appearance of the appellant.

3. The learned counsel for the appellant submitted that the appellant was not served with any of the notices, which are claimed to be issued through ITBA portal. It is submitted that otherwise the appellant had no reason not to prosecute the appeal. It is submitted that a reasonable opportunity needs to be granted to the appellant.

4. The learned CIT-DR has supported the impugned order on the ground that the appellant had failed to be vigilant in prosecuting the appeal. It is submitted that the CIT(A) was left with no option than to dismiss the appeal.

5. We have considered the submissions made. Normally the Tribunal would prefer decisions on merits, than on technicalities, unless there are circumstances clearly indicating that there was total absence of diligence or the assessee was not interested in prosecuting the matter. The matter would depend on the facts and circumstances of each case. In this case as indicated earlier, the impugned order shows that certain notices were allegedly sent through the ITBA portal, which the appellant claims to have not been received. It is necessary to note that the appellant does not

stand to gain by not prosecuting the appeal, especially when the appellant had chosen to prefer appeal challenging the order by the AO. On facts, we find that notwithstanding the non-appearance, there is no consideration of the merits of the challenge to the order passed by the learned AO. Considering the overall circumstances, we find that reasonable opportunity needs to be granted to the appellant to prosecute the appeal. In that view of the matter, the appeal is partly allowed. The impugned order is set aside and the appeal is restored back to the file of the learned CIT(A) for disposal according to law. The appellant shall cooperate for the disposal of the appeal. Needless to mention that the rival contentions of merits are left open.

Order pronounced in the open court on 23rd April, 2024.

Sd/-

[B R Baskaran]
ACCOUNTANT MEMBER
Mumbai, Dated : 23rd April , 2024.
SA

Sd/-

[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai