

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

Before Shri Sanjay Arora, Accountant Member and
Shri Keshav Dubey, Judicial Member

ITA No. 103/Coch/2023
(Assessment Year: 2012-13)

Swapana Enterprises Rahmath Shopping Complex Nr. Petrol Pump Kannur 671315 [PAN: AAJFSA3376]	vs.	Jt. CIT, Circle - 1 Kannur Range
(Appellant)		(Respondent)

Appellant by:	Shri Jacob, CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing:	29.04.2024
Date of Pronouncement:	30.04.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order dated 14.12.2022 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting its assessment under section 143(3) of the Income Tax Act, 1961 (the Act) dated 27.03.2015 for Assessment Year (AY) 2012-13.

2. At the very outset, it was submitted by Shri Jacob, the learned counsel for the assessee, that the assessee, a wholesale dealer in drugs and pharmaceuticals, aggrieved by the impugned assessment, making five different additions/disallowances – aggregating to over Rs. 5 lacs, to its returned income, filed its appeal with the first appellate authority in time, raising as many as six grounds. Vide the impugned order, the ld. CIT(A) has, however, dismissed the appeal *in limine* for want of prosecution by the assessee-appellant. No notice of hearing, he would

continue, either through email or by post, was received by the assessee, and which explains the non-appearances before him, leading to the inference of the assessee being not interested in prosecuting it's appeal, and dismissing it *in limine*. The same, in any case, ought to have been per a speaking order, which is not the case; the Id. CIT(A) dismissing the appeal solely by drawing adverse an inference, stating that no material had been brought on record by the assessee. The impugned order may, therefore, he would pray, be set aside for deciding the assessee's appeal afresh on merits, and after allowing the assessee due opportunity of hearing. Smt. Devi, the Id. Sr. DR, would submit that nothing has been brought on record by the assessee to exhibit non-receipt of notices, even as, on being queried, would state of having no objection to the matter being remanded back for an adjudication on merits.

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

3.1 The assessee's statement, through it's counsel, of non-receipt of any notice, either per email or by post, had to be, for us to allow credence thereto, supported by an affidavit. This is particularly so as, firstly, there is nothing to show that the assessee had provided any email id for communication and, two, the statement, even as observed by the Bench during hearing, is incorrect, at least to the extent of the first notice dated 28/12/2020, inasmuch as it was in fact responded to by the assessee, seeking adjournment. The same would rather lead to the presumption as to the subsequent notices having also been delivered; the assessee having provided it's postal address per Form 35, even as the Appeal stood subsequently migrated to under the Faceless Scheme.

3.2 Be that as it may, we find the impugned order as not maintainable inasmuch as it is not a speaking order, satisfying the mandate of s. 250(6) of the Act; nay, any judicial order. As rightly pointed out by Shri Jacob, unless per a speaking order, stating the issue/s arising for determination, with arguments for and against, as well as the reason/s informing the decision, it would not be possible for a higher forum

reviewing his order to appreciate the basis of the decision. We, accordingly, setting aside the impugned order, restore this appeal back to the file of the Id. CIT(A) for an adjudication on merits in accordance with law and after allowing due opportunity of hearing to the parties before him. The assessee shall, as clarified by Sh. Jacob, duly cooperate in the ensuing proceedings. Notices of hearing to the assessee by the office of the first appellate authority, as confirmed by him, be sent notices to the email id: 'sekanhangad@gmail.com', i.e., as finds mention in Form 36, even as the postal address also continues to be valid.

3.3 We decide accordingly.

4. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced on April 30, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: April 30, 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