

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1257/Kol/2023
Assessment Year : 2008-09

JLD Cement Private Limited	vs	ITO, Ward-6(2), Kolkata
PAN: AADCS 9409 F		
Appellant		Respondent

Date of Hearing	02.05.2024
Date of Pronouncement	17.05.2024
For the Assessee	Shri Miraj D. Shah, AR
For the Revenue	Shri Subhendu Datta, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2008-09 is directed against the order dated 27.09.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'Id. CIT(A)'].

2. At the time of hearing Id. AR stated that during the framing of the assessment order statutory notices were not served upon the assessee. Therefore, the assessment order was passed ex-parte against the assessee. In such a situation, assessee could not file the supported documents in order to substantiate its claim against the addition made by the AO. Even before Id. CIT(A) assessee has failed to file necessary documents against the addition made by the AO. He, therefore, prayed before the bench that matter may be set aside to AO with the direction to re-examine the issue afresh after affording reasonable opportunity of being heard to the assessee. The Id. DR objected to such prayer made by the assessee stated that the assessee is a habitual defaulter. Therefore, the prayer may be rejected.

3. We after hearing the rival submissions of the parties and perused the material available on record. The instant order passed by

ld. assessing officer is an ex-parte order and assessee did not appear before him while framing the assessment order and order was passed ex-parte against the assessee.

4. We have heard the rival contentions and perused the records placed before us. On perusal of the impugned order, we noticed that the instant ground raised by the assessee has merit as in the impugned assessment order is an ex-parte order as the assessee in the instant case could not file necessary details as well as submissions at the time of framing of the assessment order and it is an *ex-parte* order. Under these given facts and circumstances and in the interest of justice we restore the matter in the instant appeal to the file of ld. AO for adjudicating afresh to pass a speaking order after considering the submission made by the assessee after affording reasonable opportunity of being heard to the assessee. The assessee also directed to remain vigilant and file necessary documents in support of its grounds of appeal and should not take any further adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance before the ld. AO then the ld. AO may proceed to pass the order in accordance with law.

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

Order pronounced in the open court on 17.05.2024.

Sd/-

(Rajesh Kumar)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 17.05.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- JLD Cement Private Limited, FE-83, Sector-III, Salt Lake City, Near Bidhannagar Municipal Govt. School, Kolkata-700106.
2. Respondent – ITO, Ward-6(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata