

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री संजय अवरथी, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE-PRESIDENT

&

SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 977/KOL/2023

Assessment Year: 2013-14

Bhoometh Commosales Pvt. Ltd.....Appellant
[PAN: AAECB 4515 G]

Vs.

ITO, Ward-14(1), Kolkata.....Respondent

Appearances:

Assessee represented by: J.M. Thard, Adv.

Department represented by: B.K. Singh, Addl. CIT.

Date of concluding the hearing : July 9th, 2024

Date of pronouncing the order : July 23rd, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the return of income for AY 2013-14 was filed on 11.01.2014 declaring a loss of Rs. 43,929/-. The case was selected for scrutiny and the assessment was completed u/s 144 of the Income Tax Act, 1961 (in short the 'Act') since the appellant failed to respond to any of the notices issued by the Assessing Officer (hereinafter referred to as ld. 'AO'). The ld. AO made the following additions:

- i) undisclosed sale of Rs. 1,700/-
- ii) undisclosed purchases of Rs. 10,08,645/-

- iii) unexplained borrowings of Rs. 9,89,901/-
- iv) Disallowance u/s 14A of the Act 9,963/-
- v) Undisclosed contract receipts of Rs. 80,27,400/-
- vi) Disallowance of loss of Rs. 43,929/-

1.1. Aggrieved with this action, the appellant approached the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Id. 'CIT(A)'] but there also he failed to respond to as many as seven notices issued on the e-mail address available with that office. Thereafter, the Id. CIT(A) proceeded to adjudicate the case on merit, on the basis of available records and partly afforded relief on the addition of Rs. 80,27,400/- by deleting part of the said addition through sustaining only Rs. 66,192/- from this. The rest of the additions were confirmed at the first appellate stage.

1.2. Aggrieved with this action of Id. CIT(A) the appellant has approached the ITAT through as many as eleven grounds of appeal which are lengthy and argumentative, hence, are not reproduced. The main point of contention was that the notices purportedly issued by the AO and the Id. CIT(A) were not received and hence, the appellant could not make any worthwhile presentation before either of the authorities. It has also been strongly averred that the notice u/s 143(2) of the Act and the subsequent notices u/s 142(1) of the Act were not received and hence, there was a question mark on the assumption of jurisdiction itself. To verify this claim, the Bench directed for the assessment records to be produced to verify if at all notice u/s 143(2) of the Act was issued or not. Through the Id. D/R documents were produced and it is seen that notice u/s 143(2) of the Act dated 09.11.2014 was issued by one Sandip Mondal, ITO, Ward-11(2), Kolkata.

1.3. Id. A/R averred that apparently the Department was sending notices at the wrong address and hence, the same were never received by the assessee. He argued that once the notice u/s 143(2) of the Act is not served then the assumption of jurisdiction itself would be vitiated and the impugned proceedings were liable to be quashed.

1.4. Id. D/R took us through the documents filed by the Department and averred that it was highly unusual that the assessee did not respond to even notices of hearing sent on the e-mail provided by him to the Id. CIT(A).

2. We have carefully considered the submissions by the Id. D/R, the Id. A/R and also perused the documents placed on record by the Income Tax Department as well as the documents placed before us by the Id. A/R through a paper book running into 133 pages, in which there are a number of documents which have been obtained from the file of the Id. AO. It is clearly visible that not only notice u/s 143(2) of the Act but also notices u/s 142(1) of the Act were sent by the Id. AO but obviously were not responded to by the appellant. It is felt that once the fact of issuance of notice u/s 143(2) of the Act is established from the records and even if the assessee has to be believed that he did not receive the said notices then it has to be treated as a curable irregularity and not a fatal illegality. Considering the totality of facts and circumstances of this case, we deem it fit to remand back the matter to the Id. AO for fresh adjudication *de novo*, with the direction that the appellant will duly cooperate in the proceedings.

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

Order pronounced in the open Court on 23rd July, 2024.

Sd/-

[Rajpal Yadav]
Vice President

Dated: 23.07.2024

Bidhan (P.S.)

Sd/-

[Sanjay Awasthi]
Accountant Member

Copy of the order forwarded to:

1. **Bhoometh Commosales Pvt. Ltd., C/o-THARD & CO., 11, Pollock Street, 2nd floor, Kolkata, West Bengal, 700001.**
2. **ITO, Ward-14(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata