

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.1193/KOL/2024

Assessment Year: 2018-19

M/s. Bengal Shristi Infrastructure Development Ltd. ***Appellant***
Block No. 1, Administrative Building,
City Centre, Durgapur, West Bengal-700091.
(PAN: AABCB8990N)

Vs.

Assistant Commissioner of Income Tax, ***Respondent***
Circle-2, Durgapur

Appearances by:

Shri Sunil Surana, FCA appeared for Appellant.

Shri Abhijit Adhikar, Addl. CIT appeared for Respondent.

Date of concluding the hearing : 28.08.2024

Date of pronouncing the order : 06.09.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax, (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 16.02.2024 arising out of the assessment order framed u/s. 143(3)/144 of the Act by Assessing Officer, Income Tax

Department, National e-Assessment Centre, Delhi dated 30.04.2021.

2. At the outset, Ld. Counsel for the assessee submitted that the Ld. CIT(A) has not recorded any specific finding on any of the issues agitated before him before passing an ex parte order. Ld. CIT(A) dismissed the appeal of the assessee ex parte as there was no compliance to the following notices sent on the e-mail ID registered under e-filing portal:

SL. NO.	DATE OF NOTICE	DATE OF HEARING	REMARKS
1.	14/10/2022	27/10/2022	No Reply
2.	28/07/2023	08/08/2023	No Reply
3.	16/10/2023	25/10/2023	Requested for adjournment vide reply dated: 27/10/2023
4.	09/11/2023	16/11/2023	No Reply
5	04/01/2024	19/01/2024(final)	Requested for adjournment vide reply dated: 23/01/2024

3. Before us, Ld. Counsel for the assessee submitted an affidavit explaining the reasons for not attending before the Ld. CIT(A) as Shri Navin Kumar Agarwal, Authorised Representative looking after the tax affairs of the assessee fell ill from spondylitis and severe back pain. So, he urged before the bench to set aside the

order of the Ld. CIT(A) and restore the matter to him for adjudication afresh.

4. On the other hand, Ld. CIT, DR did not oppose to the request made by Ld. AR for giving one more opportunity to represent its case before the Ld. CIT(A).

5. We have heard rival contentions and perused the records placed before us. Sub-section 6 of section 250 mandates the ld. CIT(Appeals) to determine the points in dispute and thereafter record the reason in support of his conclusion on those points. A perusal of the impugned order would suggest that the ld, 1st Appellate Authority failed to adhere the mandate given in Section 250(6) of the Income Tax Act. In order to buttress our conclusion, we deem it appropriate to take note the finding of Ld. CIT(A) recorded in paragraph no. 5, which reads as under:

“5. The Appellant has remained non-compliant during the appellate proceedings and has not provided any concrete evidence relating to the addition made by the AO during the course of assessment, for which the assessee filed an appeal, rebutting the same with various grounds of appeal. Thus the appellant has not been able to controvert the stand taken by the Assessing Officer during the Appellate proceedings. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known dictum, "VIGILANTIBUS NON DORMIENTIBUS JURA SUBVENIUNT". Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”

6. It is pertinent to observe that the ld. 1st Appellate Authority has simply reproduced the grounds in appeal and thereafter recorded some case laws and above finding. It is also observed that few notice of hearing were not communicated to assessee. Therefore, we are of the view that the impugned order of ld.

CIT(Appeals) is not sustainable and we set aside the order and remit the issues to the file of Id. CIT(Appeals) for fresh adjudication. At this stage, Id. Counsel for the assessee submitted that now all the appeals are to be decided by National Faceless Appellate Authority and it is not ascertainable how the appeal will be entertained and how to carry out the execution of the order of the Tribunal. Shri Sunil Surana, Id. Counsel for the assessee submitted on behalf of the Bar that now a Special Authority, namely Principal Chief Commissioner of Income Tax, National Faceless Appeal Centre (NFAC) has been designated as Special Authority for taking up all these proceedings. Therefore, Registry is directed to remit one additional copy of this order to above authority i.e. **“Principal Chief Commissioner of Income Tax, National Faceless Appeal Centre (NFAC)”**, so that the appeal of the assessee is to be re-adjudicated at the level of Id. CIT(Appeals). Needless to say that assessee should be given adequate opportunity of being heard and assessee to also avoid adjournments unless otherwise required for reasonable cause.

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

Order is pronounced in the open court on 06th September, 2024.

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Dr. Manish Borad)
Accountant Member

Dated : 06.09.2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – M/s. Bengal Shristi Infrastructure Development Ltd.**
2. **Respondent – ACIT, Circle-2, Durgapur**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata