



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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 3066/MUM/2024	A.Y.2014-15
Naples Constructions Pvt. Ltd. 514 Dalamal Tower 211 FPJ Marg, Nariman Point, Mumbai	DCIT 3(2)(2), Mumbai
	Vs.
(Appellant)	(Respondent)
PAN	AACCN 3578P
Assessee by Revenue by	Shri Pradip N Kapasi Shri S Srinivasu, CIT (DR),
Date of hearing	30 th July, 2024
Date of pronouncement	08 th October, 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Naples Constructions Private Limited [the assessee/appellant] against appellate order passed by the National faceless appeal Centre, Delhi (the learned CIT – A) for Assessment Year 2014-15 dated 12/4/2024 wherein the appeal filed by the assessee against the assessment order passed by the Deputy Commissioner of Income Tax-3(2)(2), Mumbai (the learned AO) passed



under section 143 (3) read with section 147 of the Income Tax Act, 1961 (hereinafter called the 'Act') on 26/12/2017 was dismissed ex-parte, for the reason that hearing notices were sent on 3/12/2018, 12/6/2019 and 12/7/2021 and the assessee did not respond to any of the above notice.

2. Thus, the appellate order was passed without hearing the appellant.
3. Assessee is aggrieved with the same and has raised 7 grounds of appeal, but Ground No. 1 was with respect to the passing ex-parte order by the learned CIT – A without giving any opportunity to of hearing to the assessee despite the assessee appeared before the learned CIT – A, filed 2 paper books containing 316 and 163 pages which were completely overlooked. The grievance of the assessee is serious and needs to be interest at the first instance.
4. Briefly stated the facts of the case shows that assessee is a private limited company which has entered into an agreement granting development rights to another company for Project development to its holding company. Assessee filed its return of income on 30/9/2014 declaring a loss of Rs. 31,402/-. The return was revised on 28/3/2016 at a loss of Rs. 31,937/-. Thereafter the case of the assessee was reopened by issue of notice under Section 148 of the act on 17/3/2017 for the reasons and elaborate recorded at page number 2 – 4 of the paper



books. The assessee responded by filing the return of income under section 148 of the act on 28/3/2016. The copy of the reasons recorded were provided to the assessee and subsequently the assessment proceedings commenced. At the end of the assessment proceedings, the total income of the assessee was assessed at Rs.287,290,925/- by making an addition to the total income of the assessee with respect to as business income by reassessment order dated 26/12/2017.

5. The assessee preferred an appeal before the learned CIT – A who disposed of the appeal of the assessee holding that assessee has been given three opportunities on 3/12/2018, 12/6/2019 and 12/7/2021 which was not responded to accordingly the appeal of the assessee was dismissed.
6. Before us the learned authorised representative has filed an affidavit of the authorised signatory wherein it has been mentioned that on 10/1/2019 assessee filed a paper book having acknowledged by the learned CIT – A. The assessee company Representative appeared before him. Written submissions were also filed on 10/1/2019 further on 3/12/2018 the assessee attended and filed a paper book despite all these represented before the learned CIT – A, the learned CIT – A dismissed the appeal of the assessee for non-submission.
7. The learned Departmental Representative (DR) submitted that the matter may be restored back to the file of the



learned CIT – A to decide the issue on the merits of the case after giving assessee and opportunity of personal hearing.

8. We carefully considered the rival contention and perused the order of the learned CIT – A. We find that the learned CIT – A has recorded three notices issued to the assessee and stated that no information is furnished. Therefore, he dismissed the appeal of the assessee. Contrary to that there is an affidavit available before us the assessee wherein it is stated that a paper book has been submitted, along with the return submission, which were ignored by the learned CIT – A and the appeal of the assessee was dismissed. We find that it is a sorry state of affairs that an appellate authority decides an issue in ignoring the written submission and the paper book filed by it and then stating that notices of hearing were not responded by the assessee. In view of this we restore the whole appeal back to the file of the learned CIT – A with a direction to the learned CIT – A to consider written submission and paper book filed by the assessee and then issue a notice of hearing to the assessee granting an opportunity of personal hearing, then decide the issue afresh. The onus would be on the CIT – A to show that the submission made by the assessee are considered and decided objectively by passing a speaking order. In the result ground number 1 of the appeal of the assessee is allowed.



9. All other grounds on the merits of the issue are left on adjudicated.
10. In the result appeal of the assessee is allowed with above direction.

Order pronounced in the open court on 08/10/2024.

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.10.2024
Dragon

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai