

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

S.A. No. 43/Coch/2024 (in ITA No. 191/Coch/2024) & ITA No. 191/Coch/2024 Assessment Year : 2015-16

M/s. Aarkey Builders and Developers, Mandath House, Thaikkattukara P.O., Aluva, Kerala – 683 106. PAN: ABFA3613N	Vs.	The Income Tax Officer, Aluva, Kerala.
APPELLANT		RESPONDENT

Assessee by	:	Shri James Kutty Antony, CA
Revenue by	:	Smt. Girly Albert, Snr.DR

Date of Hearing	:	01-10-2024
Date of Pronouncement	:	28-10-2024

ORDER

PER BENCH

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 11/01/2024 in respect of the A.Y. 2015-16.

2. The brief facts of the case are that the assessee is a builder and the assessment was completed u/s. 147 r.w.s. 144 of the Act in which an addition was made u/s. 69 of the Act. It was explained by the assessee

since there are some disputes between the partners, they are not able to access the portal in order to appear before the AO. As against the said assessment order, the assessee filed an appeal before the Ld.CIT(A) and explained the facts in detail and prayed to allow the appeal. The Ld.CIT(A) issued two notices to the assessee, but the assessee had not responded to the said notices and therefore the Ld.CIT(A) had dismissed the appeal for non-prosecuting the same. As against the same, the assessee is in appeal before this Tribunal.

3. At the time of hearing, the Ld.AR brought to our notice that there was a dispute between the partners and therefore the assessee was not able to reply to the notices issued by the AO and similarly, the assessee was not able to appear before the Ld.CIT(A) and prayed one more opportunity for representing the matter before the authority.

The Ld.DR relied on the orders of the lower authorities.

4. We have heard the arguments of both sides and perused the materials available on record and considered the reasons adduced by the Ld.AR for not appearing before the Ld.CIT(A) and also before the AO even though, the assessee is having a case on merits. The assessee was also not able to explain the addition made u/s. 69 of the Act since no proper opportunity was available to them. In these circumstances, we are inclined to set aside the order of the Ld.CIT(A) as well as the AO and remit the issue to the file of the AO for making denovo assessment after hearing the assessee.

Since the main appeal is disposed of, the stay petition becomes infructuous and the same is dismissed.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay petition is dismissed as infructuous.

Order pronounced in the open court on 28th October, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 28th October, 2024.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin