

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
&
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2372/Bang/2025
Assessment Year:2023-24

<p>M/s. Ashraya Constructions No. 908D, Ideal Homes Township, 19th Cross, 19th Main, Rajarajeshwari Nagar, Bangalore 560098</p> <p style="text-align: center;">PAN – AAZFA5442R</p> <p style="text-align: center;">APPELLANT</p>	Vs.	<p>The Deputy commissioner of Income Tax Circle 5(1)(1) Bangalore</p> <p style="text-align: center;">RESPONDENT</p>
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Assessee by	:	Sri. B. Venugopal - Advocate
Revenue by	:	Sri. Balusamy N - JCIT

Date of Hearing	:	01-04-2026
Date of Pronouncement	:	02 -04-2026

ORDER

PER PRASHANT MAHARISHI, VICE – PRESIDENT

1. ITA No. 2372/Bang/2025 is filed by M/s. Ashraya Constructions[The Assessee/ Appellant] for assessment year 2023-24 against the appellate order passed by the National Faceless Appeal Centre Delhi (the learned CIT – A) dated 10th September, 2025 wherein the appeal filed by the assessee against the assessment order passed under section 143(3) read with section 144B of the Income Tax Act, 1961 (The Act) was dismissed for non-prosecution.

2. Grievance of the assessee is that the Id. CIT (A) has dismissed the appeal of the assessee for non-prosecution and did not consider the merits of the case. He dismissed it because email notices sent by him four times were not responded to even though in form no 35 assessee did not mention confirmation of the same.
3. The brief fact of the case shows that assessee is a partnership firm carrying on the business of Class-1 contract in the business of construction of civil structures. It filed return of income on 28thSeptember 2023 at a total income of ₹ 2,67,76,510. The return of income was selected for scrutiny and notice under section 143 (2) was issued on 19thJune 2024. Subsequently the assessment proceedings were converted into faceless assessment proceedings.
4. After scrutiny of the relevant details the return of income was assessed at ₹ 5,98,03,455. There were additions on three accounts (i) of Rs.1,11,55,437 being non-deduction of tax at source under section 194Q of the act on purchases, (ii) Rs. 1,44,69,255 being 30% of sum allegedly paid to the contractors on which tax is not deducted at source under section 194C of the act and (iii) ₹ 74,22,253 being the amount of sundry creditors allegedly unexplained by the assessee.
5. The assessment order was passed on 17thMarch 2025 which was challenged before the learned CIT – A. The assessee was granted four opportunities of hearing, but assessee did not submit any response and the learned CIT – A dismissed the appeal of the assessee stating that assessee is not interested in prosecuting the appeal.
6. The learned advocate Sri. B. Venugopal vehemently submitted that the addition does not deserve to be made in the hands of the assessee on the merits of the case. He discussed each of the additions made by the learned assessing officer. Even otherwise he submitted that the learned CIT – A has not decided the issue on the merits of the case but has dismissed the appeal of the assessee for non-prosecution. He submitted that on form No. 35 the assessee has not confirmed that the notices to be sent by email. Despite

migration, the notices could not have been sent through email. Therefore, four notices submitted by the learned CIT – A within a short span of two months which were not received by the assessee and therefore it has resulted into the appellate order passed by the learned CIT – A in dismissing the appeal.

7. The learned Authorized Representative extensively discussed each addition made by the learned AO. He submitted that even on the merit these additions could not have been made.
8. The learned Departmental Representative Sri. Balusamy submitted that the learned CIT – A has issued four notices to the assessee which were not complied with and therefore there is no option left with the assessing of the CIT appeal but to dispose of these appeals. On the merits of the case, he relied upon the order of the learned AO.
9. We have carefully considered the rival contention and perused the orders of the learned lower authorities. No doubt the learned assessing officer has made the above three additions after giving assessee an opportunity of hearing and perusing the details furnished. Aggrieved with the assessment order, the assessee preferred an appeal before the learned CIT – A which was dismissed by him stating that assessee does not want to prosecute this appeal because four notices sent by him through email were not responded too.
10. On careful perusal of form No. 35 filed before him, shown to us, we find that assessee did not either say 'yes' or 'no' where question is raised whether assessee would like to receive the notices through email. Thus, sending the notices to the assessee through email is no service of notice. Further the learned CIT – A is duty-bound to decide the issue on the merits of the case. In the present case there is not a single word being said by the learned CIT – A on the merits of the case. The appeal of the assessee is dismissed for non-prosecution.

11. The learned CIT appeal did not have this power. He has only powers of confirm, reduce, enhance or annul the assessment. Thus, the appellate order of the learned CIT – A is not sustainable in law.
12. Though assessee also placed its case on merits, but however as the Id. CIT (A) has not discussed a word on merits of the addition, same is not required to be discussed at this stage.
13. In view of the above facts, we restore the whole appeal back to the file of the learned CIT – A with a direction to the assessee to respond to the emails or notices sent by the learned CIT – A by making the submission if assessee wishes to make some. The learned CIT – A is directed thereafter to decide the appeal on merits of the case.
14. In the result appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 02nd April 2026.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
VICE-PRESIDENT

Bangalore,
Dated, the 02nd April 2026.

VM

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. CIT(A)

By order
Assistant Registrar,
ITAT, Bangalore