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

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 7392/Mum/2019

(A.Y: 2014-15)

Dolphin Spaces Pvt Ltd H-102, Nerul Station Complex, Nerul West, Navi Mumbai – 400706.	Vs.	ITO Ward 15(1)(4) 15B Ground Floor, Aayakar Bhavan MK Road, Mumbai – 400020.
PAN/GIR No. : AAECD0543L		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri Gurbindar Singh, DR

Date of Hearing	12.05.2021
Date of Pronouncement	18.05.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) -24 Mumbai, passed u/s. 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

> *"1. The Ld. CIT(A) has erred in law and on the facts of the case in dismissing the appeal in limine relying on the decision of the Hon'ble ITAT Delhi Bench in the case of Multiplan Ind P Ltd.*

> *2. The Ld. CIT(A) has erred in law and on the facts of the case in not discussing the merits of the case and not passing a speaking order.*
>
> *3. The Ld. CIT(A) has erred in law and on the facts of the case in not accepting the fact that the assessee is a builder and the income was to be declared as per project completion method instead taxing the income on the basis of percentage completion method.*

2. The Brief facts of the case are that, the assessee company is engaged in the business of construction and redevelopment of buildings, commercial complex, plots and filed the return of income for the A.Y 2014-15 on 30.09.2014 declaring a total income of Rs.5,94,320/-, and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under the CASS, and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and the case was discussed. The A.O found that the assessee company is following the project completion method and has disclosed work in progress and also additions during the year. The assessee has submitted the details following the project completion method supporting the income. But the AO was not satisfied with the explanations as the assessee company has not followed the Accounting Standards AS-7 & AS-9 and recalculated the profits considering the buildup area, cost of land, work in progress and finally

estimated the profit on construction activities which works out to Rs. 99,08,497/- and assessed the total income of Rs.1,05,02,820/- and passed the order u/s 143(3) of the Act dated 27.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) has issued notices on various dates in respect of posting/hearing of the case but there was no response and the CIT(A) dismissed in limine the assessee appeal ex-parte. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Hon'ble Tribunal.

4.At the time of hearing none appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).We heard the Ld. DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the ex-parte order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and notices were also issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte without going into the merits of the case. We on perusal of the CIT(A) found that the Ld.CIT(A) has issued the notice of hearing, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not inclined to prosecute the appeal. We find that the assessee company has raised grounds of appeal challenging additions of the A.O. due to change in accounting policies. And there could be various reasons for none appearance which cannot be overruled. We considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate its case before the CIT(A) along with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should cooperate in submitting the information for early disposal of the appeal and allow the grounds of appeal of the assessee statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.05.2021

Sd/-	Sd/-
(S RIFAUR RAHMAN)	(PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 18.05.2021

KRK, PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai