

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.2731, 2732, 2733, 2730, 2734 & 2735/DEL/2022
Assessment Years 2011-12, 2014-15, 2016-17, 2017-18 & 2018-19

MARC Laboratories Ltd. Plot No.5, 2 nd Floor, B.N. Block Central Market, Shalimar Bagh New Delhi.	Vs.	Deputy Commissioner of Income Tax National E-Assessment Centre Delhi
TAN/PAN: AAACM2385F		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri R.K. Jain, Sr.DR		
Date of hearing:	12	03	2024
Date of pronouncement:	21	03	2024

ORDER

PER BENCH:

The captioned appeals arise from the order of the Commissioner of Income Tax (Appeals)-29, New Delhi in respective assessment orders passed by the Assessing Officer tabulated hereunder:

Sr. Nos.	ITA/CO Nos.	CIT(A) Order dated	Assessment Order date and Assessment Year	Order passed under Sections
1.	ITA No.2730/Del/2022	CIT(A)-29, New Delhi order dated 05.09.2022	Assessment order dated 29.12.2019; A.Y. 2017-18	Assessment Order under section 143(3) of the Income Tax Act, 1961.
2	ITA No.2731/Del/2022	CIT(A)-29, New Delhi order dated 30.08.2022	Assessment order dated 26.12.2016; A.Y. 2011-12	Assessment Order under section 147 of the Income Tax Act, 1961.
3.	ITA No.2732/Del/2022	CIT(A)-29, New Delhi order dated 30.08.2022	Assessment order dated 27.12.2016; A.Y. 2014-15	Assessment Order under section 143(3) of the Income Tax Act, 1961.
4.	ITA No.2733/Del/2022	CIT(A)-29, New Delhi order dated 30.08.2022	Assessment order dated 24.12.2018; A.Y. 2016-17	Assessment Order under section 143(3) of the Income Tax Act, 1961.
5.	ITA No.2734/Del/2022	CIT(A)-29, New Delhi order dated	Assessment order dated	Assessment Order under section 143(3) of the

		30.08.2022	29.12.2019; A.Y. 2017-18	Income Tax Act, 1961.
6.	ITA No.2735/Del/2022	CIT(A)-29, New Delhi order dated 30.08.2022	Assessment order dated 13.02.2021; A.Y. 2018-19	Assessment Order under section 143(3) r.w. Section 143(3A) & 143(3B) of the Income Tax Act, 1961.

2. It is seen from the record that notice of hearing was duly served upon the assessee. As per the case records, none appeared from the assessee despite service of notice on several occasions. Accordingly, the matter was proceeded *ex-parte*.

3. As per the grounds of appeal, the assessee has taken various grounds seeking to assail the additions/disallowances of expenses made by the AO. As per the grounds of appeal, the assessee contends that the first appellate order has been passed without any opportunity to the assessee based on un-communicated notice to the assessee and therefore, passed in breach of principles of natural justice.

4. On perusal of the respective first appellate orders, we notice that the CIT(A) has dismissed the appeal *in limine* on the grounds of non-prosecution of appeal by the assessee before him. The CIT(A) has passed a cryptic order without any cogent discussion on merit.

5. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points along with reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in *ex parte* order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of *CIT vs. Premkumar Arjundas Luthra HUF, (2017) 291 CTR 614 (Bom.)*. A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on various points placed for its determination at all and dismissed the appeal of assessee for default in non appearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

6. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various

points. The assessee is cautioned to extend full co-operation to the CIT(A) without any demur, failing which, the CIT(A) shall be at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

7. In the result, all the captioned appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2024

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: **/03/2024**

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**