

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1039/Kol/2023
Assessment Year: 2017-18

Abhishek Shaw 22/A/1, West Ghoshpara road, Authpur, North 24 Parganas, West Bengal-743128 (PAN: CFOPS8283J)	Vs.	Income Tax Officer, Ward- 50(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, AR
Respondent by : Shri Subhro Das, Addl. CIT, Sr. DR

Date of Hearing : 01.02.2024
Date of Pronouncement : 07.02.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order No. ITBA/NFAC/S/250/2023-24/1055556675(1) dated 29.08.2023 passed against the Assessment order by ITO, Ward-50(6), Kolkata u/s.144 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated.17.12.2019 for AY 2017-18.

2. Grounds of appeal taken by the assessee are reproduced as under:

"1. For that on the facts and circumstances of the case, Ld. (Appeals), NFAC was grossly erred in passing ex-parte appeal order on 29/08/2023 when appellant has sought adjournment of the hearing dated 17/08/2023 till 01/09/2023.

2. For that on the facts and circumstances of the case, Ld. CIT(Appeals) NFAC erred in not looking to the adjournment request submitted online on

17/08/2023 seeking adjournment till 01/09/2023 and thereby passing ex-parte order.

3) For that on the facts and circumstances of the case, appellant prays since original order was also passed ex-parte, the matter be set-aside to the file of Ld. Assessing Officer, or to the file of Ld. CIT (Appeals), as Hon'ble Tribunal deem fit and proper.

4 For that on the facts and circumstances of the case, addition of Rs.11,51,000/- was made on account of deposit of SBN during demonetization in the assessment completed u/s. 144 of the Act and therefore matter be resorted to the file of Assessing Officer to pass fresh order.”

3. We note that ground nos. 1, 2 and 3, all relate to passing of ex parte order by ld. CIT(A) by not considering the adjournment request filed by the assessee.

4. Brief facts of the case are that assessee filed its return of income on 31.03.2018 reporting total income of Rs.3,28,700/-. Case of the assessee was selected for scrutiny for the reason “*large value of cash deposited during demonetization period as compared to returned income.*” Statutory notices were issued and served on the assessee which were not responded and remained uncomplied. Ld. AO enquired from the assessee about the deposit of cash of Rs.11,51,000/- in specified bank notes (old notes) during the demonetization period. In absence of submissions made by the assessee, the assessment was completed by making this addition and passing the assessment order u/s. 144 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A). While disposing the appeal of the assessee, Ld. CIT(A) observed that assessee did not avail several opportunities of being heard given to him. Owing to non-appearance of the assessee, Ld. CIT(A) held that assessee is not interested in prosecuting his appeal and thus disposed this off as dismissed for non-prosecution. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee submitted that non-compliance occurred because assessee had no access to the e-mail ID on which notices were sent by the Department. Ld. Counsel further submitted that assessee had cash in hand available from the preceding year. Assessee also had income earned during the year under consideration. Thus, taken together, assessee had adequate funds for deposit of cash in the bank account. However, nothing is placed on record before the Bench in support of the claim made by the Ld. Counsel. It was pleaded to remit the matter back to the file of Ld. AO since the assessment was completed u/s. 144.

6. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

7. We note that both, at the stage of assessment as well as first appellate proceeding, there was no representation made by the assessee on the explanation called for by the Ld. AO as well as Ld. CIT(A). At the same time, we must appreciate that assessee comes from a mufasil area of Authpur, North 24 Parganas. The e-mail ID stated in Form 36 appears to be of some Chartered Accountant professional .

8. We also note that appeal of the assessee was adjudicated in National Faceless Appeal Centre (NFAC), Delhi in terms of CBDT Notification dated 25.09.2020. The present faceless regime in the administration of the Act is a recent technological introduction which is going through its teething phase. It is quite natural that in the initial phase of a new technologically driven faceless regime, certain lapses of procedural requirements may occur. However, we are mindful of the fact that such lapses should not lead to rendering prejudice to effective administration and disposal

of the matter. These lapses cannot be attributed to any wilful default on either party owing to nascent stage of the faceless regime which may take sometime for the purpose of its stabilization and acclimatization for all the stakeholders. Thus, considering the issue holistically in respect of the newness of the faceless regime, by adopting a lenient approach, we take up the issues raised in the present appeal before us for appropriate adjudication, on the strength of arguments made before us and by considering the material placed on record.

9. Accordingly, we find it proper to remit the matter back to the file of Ld. AO since the impugned assessment order is u/s. 144 and no submission had been made in the course of assessment proceedings. Ld. AO is directed to deal with the issue meritoriously by passing a speaking order after affording reasonable opportunity of being heard to the assessee. Needless to say that assessee be given reasonable opportunity of being heard to make his representation and submission. Accordingly, appeal of the assessee is allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 07th February, 2024

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 07th February, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata