

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.574 to 576 /LKW/2017
A.Y. 2010-11

Dileep Kumar Gupta, 128/1069, Y Block, Kidvai Nagar, Kanpur PAN AFGPG7853A	Vs.	DCIT-3, Kanpur
(Appellant)		(Respondent)

Appellant by	Shri Shailendra Mishra, Advocate
Respondent by	Shri C.K. Singh, DR
Date of hearing	28/02/2019
Date of pronouncement	01/03/2019

ORDER

PER: A.D. JAIN, VICE PRESIDENT:

These appeals are filed by the assessee for Assessment Year 2010-11, involving common issues. As such, they are being disposed of by this composite order. Details, for convenience, are being taken from ITA No.574/Lkw/2017 in the case of Dileep Kumar Gupta. The following grounds have been raised in ITA No.574/Lkw/2017:

- "1) *Because the Ld. C.I.T.(A)-I, Kanpur has manifestly erred in dismiss the appeal u/s 147/144 of the I.T. Act, 1961.*
- 2) *Because the Ld. C.I.T.(A)-I, Kanpur's decision based on dis-believing the intension of the appellant and not verify the Audit Report.*

- 3) *Because the Ld. C.I.T.(A)-I, Kanpur has not taken any good decision in favor of the appellant and no deduction of expenses was allowed in the total turnover as well as estimated gross profit off the business.*
- 4) *Because the Ld. C.I.T.(A)-I, Kanpur has not verified the full facts of the case and dismissed the appeal.*
- 5) *Because the Ld. C.I.T.(A)-I, Kanpur has not applied his mind and dismiss the appeal suo moto.”*

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal, observing that the assessee neither appeared nor produced audit report of balance or books of account for verification.

3. We have heard the rival parties and have gone through the material placed on record, we are of the view that the matter requires reconsideration at the level of the Id. CIT(A) as the impugned order shows that Id. CIT(A) has dismissed the appeal on the ground that assessee has neither appeared nor produced the audit report of balance or books of account for verification. We also noticed from the order of the CIT(A) that he has summarily decided the appeal of the assessee without giving any cogent reason and his order is non speaking order. Under these circumstances, we feel that one more opportunity should be given to the assessee as Id. CIT(A) has not decided the appeal on merits. The provision of section 250 which deals with the procedure in appeal before the Id. CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal.

Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refile the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by Id. CIT(A) and not to seek undue adjournment and co-operate with Id. CIT(A) in disposing of the appeal.

4. Facts being similar in the other appeals, i.e., ITA Nos.575 & 576/Lkw/2017, these appeals are also restored to the file of the Id. CIT(A), with the same observations as given in ITA No.574/Lkw/2017.

5. In the result, the appeals of the assessee stand allowed for statistical purposes.

(Order pronounced in the open court on 01/03/2019)

Sd/-
T.S. Kapoor
Accountant Member

Sd/-
(A.D. Jain)
Vice President

Aks –
Dtd. 01/03/2019

Copy of order forwarded to:

- | | |
|--|---------------------------|
| <i>(1) The appellant</i> | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i> | <i>(4) CIT(A)</i> |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i> |

By order

Assistant Registrar