



IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW

BEFORE SHRI . T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No.03/LKW/2018
Assessment Year:2013-14

M/s F.I. Builders Pvt. Ltd. 118/86 Kha, Cantt. Road Lucknow	v.	Income Tax Officer 2(5) Lucknow
TAN/PAN:AAACF6583G		
(Appellant)		(Respondent)

Appellant by:	Shri B.P. Yadav, Cost Accountant		
Respondent by:	Shri C. K. Singh, D.R.		
Date of hearing:	05	03	2019
Date of pronouncement:	08	03	2019

ORDER

This is an appeal filed by the assessee against the order of the Id. CIT(A)-I, Lucknow dated 29/9/2017 for assessment year 2013-14. The grounds of appeal taken by the assessee are reproduced below:-

1. The Learned Commissioner (Income Tax (Appeals)-I, Lucknow (hereinafter referred to as the Id. CIT(A) erred on facts and in law in dismissing the appeal of the appellant by passing an ex-parte order without hearing the appellant to decide the appeal on merit.
2. The Ld. CIT(A) erred on facts and in law in not condoning the delay of 314 days caused in filing the appeal without appreciating that there was sufficient cause behind not filing the appeal on or before due date of filing the appeal.
3. The Ld. CIT(A) erred on facts and in law in confirming the addition of 4,82,400/- arrived at the rate of 8% of the value of flat sold of Rs.60,30,000/- without appreciating the fact that the books of the appellant are duly audited by a Chartered Accountant

and entries appearing in the books are supported with bills and vouchers.

4. The Ld CIT(A) erred on facts and in law in confirming the estimated addition of Rs.13,49,547/- made by the Ld. A.O. on account of receipts from family bazaar being run by the appellant without appreciating the material facts placed before him.
5. On the facts stated in the statement of facts, the Ld. CIT(A) was not justified in confirming the addition of Rs13,49,547/-

WITHOUT PREJUDICE TO ABOVE

6. The Id. CIT(A) erred on facts and in law in not appreciating the fact that once profit is estimated by rejecting the books of the appellant, no separate addition can be made in the hands of the appellant and hence addition of Rs.13,49,547/- is unjustified.
 7. The Id. CIT(A) erred on facts and in law in not providing the appellant the proper adequate or sufficient opportunity to have it say on the merit as well as on the factual aspect of the case.
 8. The appellant reserves its right to advance such other grounds before or at the hearing, which it may consider fit and appropriate, for which it craves leave to amend, alter or otherwise Modify the groups appearing hereinbefore with the kind permission of the Hon'ble Bench.
2. During the course of hearing, the Id. counsel for the assessee has invited my attention to the order of the Id. CIT(A) with the submission that the Id. CIT(A) has disposed of the appeal ex-parte without dealing with the issues on merit whereas as per law the Id. CIT(A) ought to have adjudicated the appeal on merit even if the assessee does not appear. He further submitted that the delay in filing of the appeal was not condoned by the Id. CIT(A) although there was a reasonable cause for delay in filing of the appeal. Therefore, in the interest of justice, the order of the Id. CIT(A) may be set aside and the matter may be restored to the file of the Id. CIT(A) for adjudication of

the impugned issues on merit in the light of the evidences filed by the assessee, after condoning the delay in filing of the appeal.

3. The Id. D.R. has placed reliance upon the order of the Id. CIT(A).

4. Having carefully examined the orders of the lower authorities in the light of the rival submissions, I find that the Id. CIT(A) has disposed of the appeal without dealing with the issues on merit. With regard to the delay in filing of the appeal before the Id. CIT(A), I find that the Id. CIT(A), in his order, has reproduced the contents of the application moved by the assessee for condonation of delay, which, inter alia, state that the Accountant, Shri Kamran Ahmad, who was looking after the taxation affairs of the assessee company due to an oversight and his family problems forgot to get the appeal prepared and filed within the due date as prescribed under the Act, therefore, the assessee requested to condone the delay of 314 days. In my view, there was a reasonable cause for delay in filing of the appeal before the Id. CIT(A), and the Id. CIT(A) should have been liberal in taking a view in the matter and accordingly should have condoned the delay and granted the appellants opportunity of hearing.

5. With regard to the notices issued by the Id. CIT(A), I find that the Id. CIT(A) has mentioned in his order a number of dates of notice issued, but from the order of the Id. CIT(A), it is not clear whether the notices have been served on the assessee. In this regard, I am of the view that the Id. CIT(A) should have ensured service of notice on the assessee by using the paraphernalia available with the Department and decided the appeal on merit after affording reasonable opportunity of hearing to the assessee.

6. In this view of the matter, I set aside the order of the Id. CIT(A) and restore the matter to his file with a direction to admit the appeal of the assessee for hearing after condoning the delay in filing of the appeal and re-adjudicate the issues on merit afresh after affording reasonable opportunity of hearing to the assessee. I also direct the assessee to extend all sort of co-operation in prosecuting the appeal before the Id. CIT(A).

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

Order pronounced in the open Court on 08/03/2019.

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

DATED:8th March, 2019

JJ:0603

Copy forwarded to:

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

By order

Assistant Registrar