



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

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

ITA No.354/LKW/2018
Assessment Year: 2013-14

M/s Smart Services 62-A/5, Kalyanpur Kalan Kanpur	v.	ACIT-3 Kanpur
TAN/PAN:ACAFS7120D		
(Appellant)		(Respondent)

Appellant by:	Shri Swarn Singh, FCA		
Respondent by:	Smt. Alka Singh, D.R.		
Date of hearing:	23	04	2019
Date of pronouncement:	23	04	2019

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT(A)-I, Kanpur dated 23/3/2018 for assessment year 2013-14, taking the following grounds of appeal:-

- 1. That the Id. C.I.T. (Appeals)-I, Kanpur has erred in law and on facts in passing ex parte order and sustaining the arbitrary addition/disallowance of Rs.53,13,146/- made by the Ld. A.O.*
- 1. That in passing ex parte order the Ld. CIT (Appeals)-I, Kanpur did not even call and examine the assessment records.*
- 2. That the Ld. C.I.T. (Appeals)-I, Kanpur has erred in law and on facts in sustaining the arbitrary additions/disallowances of Rs.46,13,146/- u/s 69 of the Income Tax Act, 1961 and of Rs.5,00,000/- as unexplained additional cash balance, made by Ld. A.O.*

3. That the Ld. CIT. (Appeals)-I, Kanpur has erred in law and on facts in sustaining the impugned assessment order without appreciating the fact that in contravention to CBDT Circular/Instruction, the ITO-3(4), Kanpur initially selected the case for scrutiny by issuing notice under section 143(2) of the Income Tax Act 1961 dated 31 08 2015 and later the case was suo moto transferred to ACIT-3, Kanpur without any order under section 127 of the Income Tax Act 1961, therefore, the whole assessment is illegal, void ab-initio and liable to be quashed.

4. That the impugned assessment order is illegal without jurisdiction void-ab-initio and liable to be quashed.

5. That the order of the Ld CIT (Appeals)-I, Kanpur is insupportable in law and on facts is also contrary to the principles of natural justice and equity.

6. That the addition/disallowance sustained by Ld. CIT (Appeals)-I, Kanpur in the income of the appellant company are wholly unjustified, unfounded and in any case much to high and excessive.

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non prosecution, observing that the appellant has not made compliance of the statutory notices issued by the office of the Id. CIT(A) and no written submission or paper book has been filed in support of any of the grounds of appeal. Such service of notices has, however, been disputed by the assessee.

3. Heard. We find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. Moreover, he has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order. As such, another opportunity of hearing requires to be given to the assessee to represent his case fully before the Id. CIT(A). Even otherwise, it is trite [*S. Velu Palandar Vs. DCIT*' 83 ITR 683 (Mad.) and *'Ms. Swati Pawa vs. Dy. CIT'*, 175 ITD 622

(Del)] and incumbent on the Id CIT(A) to decide an appeal on merit even in the absence of any representation before them.

4. In view of the above, the matter is remitted to the file of the Id. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

5. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 23/04/2019.

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

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:23/04/2019

JJ:2304

Copy forwarded to:

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

By order

Assistant Registrar