

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" New Delhi

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3873/Del/2019
निर्धारणवर्ष/Assessment Year:2014-15

Shri Abhishek Agarwal S/o Sh. Shubhash Chandra Agarwal, Prop. M/s Rameshwar Prasad Subhash Chandra, Bazar Gher Munaf, Amroha-24221	बनाम Vs.	ITO Ward 1(4) Amroha.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
PAN No. ALEPA3786A		

निर्धारितीकीओरसे /Assessee by	Shri K.C. Singhal, Advocate
राजस्वकीओरसे /Revenue by	Shri Pradeep Singh Gautam, Sr. DR

आदेश /O R D E R

1. This appeal filed by the assessee against the impugned order dated 30.12.2016 passed by the Ld. CIT(Appeals)-Moradabad in relation to assessment year 2014-15.

2. Assessee has raised 3 grounds of appeal which he has mentioned in the Column 10 Form No. 36 for the sake of convenience i.e. reproduced as under:

1. "That on the facts of the case, CIT(A) was not justified in dismissing the appeal ex-parte in limini without serving the

notice on the appellant. The appellant is simply a victim on account of laps on the part of his Counsel.

2. *That order of CIT(A) is illegal since order is not passed on merits of the case.*
3. *The appellant craves to raise any other ground with the approval of the Hon'ble Tribunal."*

3. At the time of hearing, Ld. Counsel for the assessee also filed additional ground of appeal which is also reproduced as under:

"The initiation of reassessment proceedings u/s 148 of the Act was illegal being void ab initio inasmuch as notice u/s 148 of the Act was issued during the pendency of original assessment proceedings initiated u/s 142(1) of the I.T. Act, 1961."

4. Ld. Counsel for the assessee stated that Ld. First Appellate Authority has decided the appeal filed by the assessee *ex parte* without giving opportunity of hearing which is contrary to the provisions of law. He further submitted that Ld. First Appellate Authority can't dismiss the appeal filed by the assessee for non-prosecution. He has to decide the appeal on merit. Therefore, the impugned order is illegal and liable to be cancelled. But he requested that additional ground raised by the assessee may be admitted and issues involved in the main ground of appeal as well as in the additional ground raised by the assessee may be set aside to the Ld. First Appellate Authority to decide the same afresh as per law, after giving opportunity to the assessee.

5. Ld. Sr. DR has not raised any serious objection on the request of the assessee and relied upon the orders passed by the Revenue Authorities.

6. I have heard the both parties and have gone through the orders passed by the Revenue Authorities especially the impugned order along with the grounds raised by the assessee specially the additional ground and I am of the considered view that the issue involved in the additional ground is legal. In the interest of justice and in view of the judgment of the Hon'ble Supreme Court of India in the case of National Thermal Power Company Limited vs. CIT 229 ITR 383 (SC). The additional ground is admitted.

7. Keeping in view of the facts and circumstances of the present case and the issues involved in the grounds of appeal, I am of the view that Ld. First Appellate Authority has dismissed the appeal for non-prosecution which is not as per the law as well as without giving sufficient opportunity to the assessee. Therefore, in the interest of justice, I am setting aside the issues in dispute mentioned in the ground of appeal as well in the additional ground of appeal to the Ld. First Appellate Authority to decide the same afresh as per law, after giving full opportunity to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

The order pronounced in the open court on 02.12.2019

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 2nd December, 2019

*Kavita Arora, Sr. PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi

Draft dictated on	25.11.2019
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Approved Draft comes to the Sr.PS/PS	02.12.2019
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File sent to the Bench Clerk	02.12.2019
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	