

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(THROUGH VIRTUAL COURT)
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 361/ALLD/2018
Assessment Year: 2012-13

Sri. Suraj Agarwal M/s Surya Jewellers Wallelyganj, Mirzapur, UP	v.	Income-Tax Officer WARD-III(I), Mirzapur, U.P.
PAN: AAXPA1362Q		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, CA
Respondent by:	Shri A. K. Singh, Sr. DR
Date of hearing:	17. 12. 2020
Date of pronouncement:	17.12. 2020

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 361/Alld/2018, is directed against an ex-parte appellate order dated 21.09.2017 in Appeal No. 01/ITO/R-III(1)/MZP/15-16 passed by learned Commissioner of Income Tax (Appeals), Allahabad(hereinafter called "the CIT(A)"),for assessment year(ay):2012-13, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 24.02.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s

143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2012-13. We have heard both the parties through video conferencing mode through virtual court.

2. The brief facts of the case are that the assessee is engaged in the business of sale and purchase of Silver, Gold and Diamond Jewellery. A survey was conducted by Revenue u/s 133A of the 1961 Act on business premises of the assessee, on 06.01.2012. The assessee filed return of income declaring income of Rs. 4,37,200/- . The AO passed an assessment order dated 24.02.2015 u/s 143(3) of the 1961 Act against the assessee, assessing income to the tune of Rs. 93,06,880/- as against returned income of Rs. 4,37,200/-, wherein several additions to the tune of aggregate of Rs. 88,67,680/- were made by the AO while framing aforesaid assessment order dated 24.02.2015, u/s 143(3) read with Section 143(2) of the 1961 Act.

3. The assessee being aggrieved by an assessment framed by the AO, challenged the additions as were made by the AO by filing first appeal with learned CIT(A), who was pleased to dismiss the appeal of the assessee in an ex-parte appellate order dated 21.09.2017 passed by learned CIT(A).

4. The assessee being aggrieved by the aforesaid appellate order passed by learned CIT(A) has filed second appeal with Income-Tax Appellate Tribunal, Allahabad (hereinafter called "the tribunal") and as many as fourteen grounds of appeal are raised by assessee in memo of appeal filed with the tribunal.

5. This appeal was heard by Division Bench of the tribunal through video conferencing mode through Virtual Court. The Id. Counsel for the assessee opened arguments before the Bench and stated that it is an ex-parte appellate order passed by learned CIT(A) where in appeal of the assessee was dismissed by Id CIT(A) ex-parte in the absence of assessee in limine without discussing the issues on merits. Prayers were made by Id. Counsel for the assessee for setting aside the appellate order passed by learned CIT(A) and restoring the issues to the file of learned CIT(A)

for fresh adjudication of appeal of the assessee by learned CIT(A). The learned counsel for the assessee stated that the assessee will duly co-operate with learned CIT(A) when the appeal will come up for hearing before learned CIT(A) in second round of litigation . The ld. DR fairly submitted that Revenue has no objection if the matter is restored to the file of learned CIT(A) for fresh adjudication on merits in accordance with law.

6. We have heard rival parties and perused the material on record. We have observed that the assessee is engaged in the business of sale and purchase of Silver, Gold and Diamond Jewellery. A survey was conducted by Revenue on business premises of the assessee , on 06.01.2012. The assessee filed return of income declaring income of Rs. 4,37,200/- . The AO passed an assessment order dated 24.02.2015 u/s 143(3) of the 1961 Act against the assessee , assessing income to the tune of Rs. 93,06,880/- , as against returned income of Rs. 4,37,200/- , wherein several additions to the tune of aggregate of Rs. 88,67,680/- were made by the AO while framing assessment u/s 143(3) read with Section 143(2) of the 1961 Act. The assessee filed first appeal before learned CIT(A). The learned CIT(A) gave several opportunities of hearing to the assessee as are stated/extracted in the page 1 and 2 of the appellate order passed by learned CIT(A), but the assessee did not appear before the learned CIT(A), who was then pleased to dismiss the appeal of the assessee ex-parte in the absence of the assessee , in limine without discussing the issues on merits which were raised by assessee in grounds of appeal in the memo of appeal filed with ld. CIT(A) and the assessment order passed by the AO was upheld by learned CIT(A). Reference is made to provisions of Section 250(6) of the 1961 Act, wherein learned CIT(A) is obligated to state points for determination in appeal before him, the decision thereon and the reasons for determination. On the part of the assessee, there was a consistent failure to appear before the learned CIT(A) when the appeal was called for hearing before learned CIT(A), which led learned CIT(A) to pass an ex-parte appellate order. Thus,

assessee is equally to be blamed for its woes. Now, before us, both the parties have submitted that the appellate order passed by learned CIT(A) be set aside and matter be remanded back to the file of learned CIT(A) for fresh adjudication of the appeal filed by assessee with learned CIT(A). After considering the entire material on record, we are of the considered view that the interest of justice will be served if the appellate order dated 21.09.2017 passed by ld. CIT(A) be set aside and the matter is set aside/restored back to the file of learned CIT(A) for fresh adjudication of all the grounds of appeal raised by assessee in its appeal filed with learned CIT(A). The assessee did not co-operated with learned CIT(A) in the first round of litigation and if in the set aside remand proceedings , if the assessee again did not co-operate , the learned CIT(A) shall be free to decide all the issues raised by assessee , on merits in accordance with law. Reference is also drawn to powers of learned CIT(A) as are contained in Section 251(1)(a) of the 1961 Act, which also include power of enhancement. Needless to say that the learned CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in the set aside remand proceedings for denovo adjudication of the appeal of the assessee filed before learned CIT(A). We order accordingly.

7. In the result, the appeal filed by the assessee with tribunal in ITA No. 361/Alld./2018 for ay: 2012-13 is allowed for statistical purposes, as indicated above.

Order pronounced in the open court on 17 /12/2020 at Allahabad at the conclusion of hearing in the presence of both the parties

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER
DATED: 17/12/2020

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –Sri Suraj Agarwal
2. Respondent – ITO, Mirzapur
3. CIT(A) -
4. CIT
5. DR -

By order
Assistant Registrar

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	.12.2020		Sr. PS/PS
2.	Draft placed before author:	.12.2020		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:	.12.2020		Sr. PS/PS
6.	Order pronounced on:	.12.2020		Sr. PS/PS
7.	File sent to the Bench Clerk:	.12.2020		
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			