

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR
BENCHES, JODHPUR BENCH, JODHPUR**

**BEFORE SHRI N.K.SAINI, VICE PRESIDENT AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 107/Jodh/2021

Assessment Years : 2017-18

M/s Gogad Fabrics Pvt. Ltd., G-13-14, Industrial Area, II Phase, Pali	Vs.	The ACIT /DCIT, Circle, Pali
PAN NO: AABCG7197A		
Appellant		Respondent

Hearing though video Conferencing

Assessee by : Sh. P.C. Parwal, CA
Revenue by : Sh. S.M. Joshi, Sr. DR

Date of Hearing : 19.01.2022
Date of Pronouncement : 31.01.2022

आदेश/Order

PER SUDHANSHU SRIVASTAVA:

This appeal is preferred by the assessee against the ex-parte order dated 24.10.2021 passed u/s 250 of the Income Tax Act, 1961 (in short 'the Act') by the CIT(Appeal), National Faceless Appeal Centre, (NFAC) Delhi.

2. The following grounds have been raised by the assessee:-

1. *The Ld. CIT(A) has erred on facts and in law in passing the order on 24.10.2021 ignoring that assessee in response to notice dated 30.-9.2021 has filed an adjournment seeking time upto 25.10.2021 and thus, the order passed by him without providing opportunity to hearing is bad in law.*
2. *The Ld. CIT(A) has erred on facts and in law in not deciding the grounds of appeal on merits.*
3. *The appellant craves to alter amend and modify any ground of appeal.*

4. *Necessary cost be awarded to the assessee.*

3. At the outset, the Ld. AR submitted that the NFAC, in the impugned order, has dismissed the assessee's appeal without considering the merits of the case and, therefore, the assessee seeks one more opportunity before the Ld. First Appellate Authority so that interest of substantial justice is met.

4. Per contra, the Ld. Sr. DR pointed out that the assessee had not availed the opportunities granted to it on as many as three occasions, as was apparent from the impugned order and, therefore, the assessee should not be given any further opportunity and the appeal of the assessee should be dismissed.

5. We have heard the rival contentions and have also perused the material on record. Admittedly and undisputedly, the assessee chose to be un-represented before the NFAC on as many as three occasions. However, the fact does remain that the NFAC did not adjudicate on the merits of the case but dismissed the assessee's appeal before it on the ground that there was no compliance of any of the notices by the assessee and, therefore, the appeal deserved to be dismissed. It is settled law that even if an ex-parte order is being passed against the assessee, the adjudication is to be made on merits. The NFAC was bound to pass a speaking order in accordance with law even if the assessee was not represented before it. Accordingly, in the interest of substantial justice, we restore this appeal to the file of the Ld. First Appellate Authority to be adjudicated on merits after affording proper opportunity to the assessee to present its case. We also direct the assessee to avail this opportunity being given by us, failing which, the Ld. First Appellate Authority shall be at liberty to

proceed with the adjudication of the appeal ex-parte qua the assessee in accordance with law.

6. In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 31.01.2022

Sd/-
(N. K. SAINI)
Vice President
Dated : 31.01.2022
“आर.के.”

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
सहायकपंजीकार/ Assistant Registrar