

**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.682/Lkw/2019
Assessment Year:2014-15

Sanjay Kapoor, E-32, Anand Cottage, Moti Vihar, Sarvodaya, Kanpur PAN:AGCPK 3754D (Appellant)	Vs.	ACIT-1, Kanpur (Respondent)
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Appellant by	Shri Pradeep Seth, CA
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	29/08/2022
Date of pronouncement	30/08/2022

ORDER

PER T. S. KAPOOR, A.M.

This appeal has been filed by the assessee against the order of learned CIT(A)-1, Kanpur dated 23/09/2019 pertaining to assessment year 2014-15.

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non prosecution, observing that several opportunities have been allowed to the assessee, but no compliance has been made by the assessee. The Id. AR at the outset submitted that in fact it is correct that Id. CIT(A) had issued various notices, a few of which were not served upon the assessee and on few occasions the assessee had sought adjournments. It was submitted that Id. CIT(A) ultimately fixed the date of hearing for 9.9.2019 against which the assessee again filed adjournment application on dated 5.9.2019 requesting therein that the

hearing be adjourned to 8.10.2019 as the counsel of the assessee was busy in preparing tax audit reports and further he was hospitalized for brain surgery. It was submitted that adjournment sought by the assessee vide letter dated 5.2.2019 was necessitated by the reasons beyond the control of the assessee, therefore, it was prayed that one more opportunity may be given to the assessee so that the merits of the case could be explained before Id. CIT(A).

3. The Id. DR on the other hand, invited our attention to the order of Id. CIT(A) where he has noted down number of opportunities given by Id. CIT(A) to the assessee and therefore it was prayed that request of assessee for further opportunity is not justified.

4. We have heard the rival parties and have gone through the material placed on record. We noted that learned CIT(A) has passed ex-parte order as according to him, nobody has appeared on the dates when the appeal was fixed for hearing before him. From the order of CIT(A), it is apparent that the CIT(A) had issued various notices to the assessee however, neither anybody appeared nor filed written submissions and ultimately the CIT(A) passed the ex-parte order. The last date fixed for hearing was 9.9.2019 and on 5.9.2019 the assessee filed an application before Assessing Officer requesting him to adjourn the case to 8.10.2019 as the counsel of the assessee was busy in filing in income tax returns and was also busy in finalizing tax audit report but the Id. CIT(A) rejected the adjournment application and decided the case on merits. We find that the assessee has not utilized the opportunities to explain his case before the Id. CIT(A) in spite of the fact that Id. CIT(A) gave him sufficient opportunities. We further find that the assessee did not file any submissions on merits of the additions therefore, we feel that one more opportunity should be given to the assessee. The provisions of section 250 which deals with the procedure in

appeal before the CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal. Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refile the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by learned CIT(A) and not seek undue adjournment and co-operate with learned CIT(A) in disposing of the appeal.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

(Order pronounced in the open court on 30/08/2022)

Sd/-
(A. D. JAIN)
Vice President

Sd/-
(T. S. KAPOOR)
Accountant Member

Dated: 30/08/2022
Aks/-

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow