

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.527/Del/2022**

**[Assessment Year : 2013-14]**

Jagdish Bhutt, F-115, Sector-56, Noida, Uttar Pradesh-201301. <b>PAN-AYLPB6080G</b>	vs	DCIT, Circle-1, Noida.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Rishi Gautam, Adv.	
<b>Respondent by</b>	Shri Sanjay Tripathi, Sr. DR	
<b>Date of Hearing</b>	16.11.2022	
<b>Date of Pronouncement</b>	16.11.2022	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee for the assessment year 2013-14 is directed against the order of Ld. CIT(A), Noida dated 30.04.2017.

2. The assessee has raised following grounds of appeal:-

1. *"The impugned order passed by the Commissioner Of Income Tax (Appeals) Noida-1 dated 30th April 2017 in CIT(APPEAL ) GHAZIABAD/10919/2016-17 is a blank order (as downloaded from the website).*
2. *That the order records no reason for dismissing the appeal filed by the Appellant.*
3. *That the impugned order is passed by the CIT under Section 144 of the Income Tax Act which amounts to a dismissal of the appeal without giving any reason.*
4. *The impugned order is ex-facie bad in law and liable to be dismissed since it is devoid of any reasoning much less the facts and thus liable to be set aside and the instant matter ought to be*

*remanded back for re-hearing before the Commissioner Of Income Tax (Appeals) Noida-1.*

5. *The CIT(A) has passed ex parte assessment orders without providing proper opportunity to the assessee or his AR is not justified and bad in law.*
6. *The assessee filed the return of income declaring total income of Rs.22,53,692/- and after claiming deduction under Chapter VI total taxable income declared was of Rs.2143690/- on 25-03-2015 vide acknowledgement number 0523254700250315. The case was later selected for scrutiny thru CASS due to reason that the receipts as per AS26 were more than the income declared but the notices were sent to F-115, Sector-56, Noida (U.P.) in place of address mentioned R-4, First Floor, Khirki Extension, Malviya Nagar, New Delhi-110 017 as per the return of income. The assessee did not received the notices sent as mentioned in the assessment order.*

*Case relied up on*

*Jaffaorulla Syeaadunnishaa Vs ACIT (Madras High Court) in violation of principles of natural justice and against the Circular dated December 26, 2019*

7. *The assessing officer had made additions of Rs.10247101/- into the declared total business income of Rs.2129550/-, in the ex-parte orders so as to assess 100% of gross receipts as per AS26 of Rs. 12376651/-. No business entity or even charitable institution can earn gross receipts as taxable income, had already been decided in many cases. Only income after allowing expenses incurred to earn the income can be taxed; which means the assessment orders passed assessing gross receipts as taxable income is wrong and unjustified.*

*Important Case Laws Cited / relied upon:-*

*Commissioner of Income Tax Vs. President industries (2002) 124 Taxman 654  
Commissioner of Income Tax Vs. Samir Synthetics Mills (2001) 326 ITR 410*

*Commissioner of Income Tax Vs. Gurubachhan Singh (2008) 171 Taxman 406*  
*Commissioner of income Tax Vs. Balchand Ajit Kumar 135 Taxman 180*

*Kishor Mohnalal Telwala Vs. AC/T (1999)A7 Taxmann.com 86 Sairam Multi*  
*Speciality Hospital Vs. ACIT, (2014) 40 CCH 0132*

*ITAT, Hyderabad Bench decided in the case of - Society for Integrated Development in Urban & Rural Areas vs. DCIT (90 ITD 493(Hyd.) and the Tribunal has reproduced extracts from an earlier order of the ITAT, Hyderabad Bench rendered in the case of Nirmal Agricultural Society vs. ITO. In that decision, the Tribunal has 6 ITA 7 89 & CO 91/11 held that even in a case where no exemption is granted under sections 11 & 12, the Assessing Officer can assess only income after deducting the expenditure and it is not possible to treat the entire receipts as income of a Society.*

8. *The assessing officer had made further additions of Rs.2175130/- under section 69A of Income Tax Act 1961, stating various cash deposit amounts in the bank account maintained with HDFC Bank, Hauz Khas branch New Delhi, by the assessee. This makes total taxable income equal to Rs.14565921/- means 118% of the gross receipts as per AS26 which is of Rs.12376651/-.”*

3. The assessee has filed an application seeking condonation of delay. Ld. Counsel for the assessee reiterated the submissions as made in the application seeking condonation of delay. It is the contention of the assessee that the impugned order dated 30.04.217 was not duly served upon the assessee. An affidavit in this regard by the assessee has also been filed.

4. Ld.Sr.DR opposed these submissions.

5. Considering the fact that the impugned order was uploaded blank by Ld.CIT(A), we condone the delay and admit the appeal for hearing.

6. At the outset, Ld. Counsel for the assessee pointed out that Ld.CIT(A) has uploaded a blank order in the official website of the Income Tax Department. He further contended that the Assessing Officer (“AO”) vide *ex-parte* assessment order has treated the entire receipts as income of the assessee. He submitted that the assessing authority did not provide any effective opportunity to the assessee in gross violation of principle of natural justice.

7. We have heard the Ld. Authorized Representatives of the parties and perused the material available on record. We find that the Ld.CIT(A) has uploaded a blank order. The relevant contents of the blank order are reproduced as under:-

To,

JAGDISH BHUTT  
F-115 SECTOR-56 ,NOIDA  
GAUTAM BUDH NAGAR 201301 ,Uttar Pradesh

PAN: AYLPB6080G	AY: 2013-14	Dated: 30/04/2017	Order No : ITBA/APL/S/250/2017-18/1004129352(1)
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**Order u/s 250 of Income Tax Act.1961**

Instituted on **27/04/2016** from the order of **DCIT, CIRCLE-1, NOIDA** dated **14/03/2016**

Appeal No	CIT(APPEAL ) GHAZIABAD/10919/2016-17 (Manual Appeal Register Number: 79/2016-17)
Status/Deductor Category	
Residential Status	Resident
Nature of Business	N.A.
Section under which the order appealed against was passed	144
Date of Order under which the order appealed against was passed	14/03/2016
Income Assessed (in Rs .)	14565920
Tax/Penalty/Fine/Interest Demanded (in Rs.)	5627030
Date of Hearing(s)	
Present for the appellant	NA
Present for the Department	NA

*Sanjay Kumar Srivastava*  
CIT(Appeal), Ghaziabad

8. Further, it is seen before the AO that there was no representation on behalf of the assessee. Therefore, looking to the totality of the facts and to subserve the interest of principle of natural justice, we hereby set aside the impugned order and restore the assessment back to the file of AO for framing the assessment *denovo*. Needless to say that the AO provide adequate opportunity to the assessee and the assessee is also directed not to seek any adjournment without any reasonable and valid grounds.

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

Order pronounced in the open Court on 16<sup>th</sup> November, 2022.

**Sd/-**

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI