

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD 'SMC' BENCH, ALLAHABAD
BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 36/ALLD/2022
Assessment Year: 2008-09

Mr. Waseem Ahmad 124/1, Myorabad, Allahabad- 211003, U.P.	v.	Income-Tax Officer Ward 1(5) Range , Allahabad-211001, U.P.
PAN: AHQPA8636D		
(Appellant)		(Respondent)

Appellant by:	Adjournment Application(Rejected)
Respondent by:	Shri A. K. Singh, Sr. DR
Date of hearing:	03.01.2023
Date of pronouncement:	03.01.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 36/Alld/2022, is directed against an ex-parte appellate order dated 20.09.2022 in Appeal No. CIT(A), Allahabad/10316/2016-17(DIN & Order No. ITBA/NFAC/S/250/2022-23/1045722408(1)) passed by learned Commissioner of Income Tax (Appeals), NFAC, Delhi(hereinafter called "the CIT(A)"),for assessment year(ay):2008-09, the appellate proceedings had arisen before learned CIT(A) from penalty order dated 30.09.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2008-09. The appeal was heard in open Court Proceedings. None appeared for the assessee when this appeal was called for hearing before SMC bench, but Shri Parveen Godbole, CA has filed adjournment application, but no authority/vakalatnama / power of attorney is filed, and hence adjournment application stand rejected. The department is represented by ld. Sr. DR, who made representation before the Bench.

On Being asked by the Bench, the Id. Sr. DR submitted that the assessee did not appear before Id. CIT(A) despite several opportunities being granted by Id. CIT(A). The Id. Sr. DR fairly submitted that Id. CIT(A) has passed an ex-parte order without discussing the issues in appeal on merit , which is not in consonance with the mandate of the Act. The Id. Sr. DR fairly submitted that the matter can be restored back to the file of Id. CIT(A) for fresh adjudication on merits in accordance with law.

2. I have heard Id. Sr. DR and perused the material on record. I have observed that this appeal has arisen from penalty of Rs. 71,000/- levied by the AO u/s 271(1)(c) of the 1961 Act , which was later confirmed by Id. CIT(A). Without going into merits of the issue in this appeal, it is observed that the learned CIT(A) gave several opportunities of hearing to the assessee as are stated/extracted in the page 3 and 4 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 Id. CIT(A) and the penalty order passed by the AO was upheld by learned CIT(A). The Id. CIT(A) finally recorded in his order as under:

“ 4.1.....Since there is no submission or material available on record relating to merit and in support of grounds on appeal , no decision is being rendered on merit.

5. In the result, the appeal of the appellant is dismissed.”

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, the Id. Sr. DR has fairly 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, I am of the considered view that the interest of justice will be served if the appellate order dated 20.09.2022 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). I have also observed that the assessee has specifically raised ground of appeal no. 2 in memo of appeal filed with ITAT, Allahabad Bench, Allahabad , wherein he has raised his grievance on account of ex-parte order passed by ld. CIT(A). The assessee on its part 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. 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.

3. In the result, the appeal filed by the assessee with tribunal in ITA No. 36/Alld./2022 for ay: 2008-09 is allowed for statistical purposes, as indicated above.

Order pronounced in the open court on 03/01/2023 at Allahabad at the conclusion of hearing in the presence of ld. Sr. DR.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 03/01/2023

Copy forwarded to:

1. Appellant –Mr. Waseem Ahmad, 124/1, Myorabadm Allahabad-211003, U.P.
2. Respondent – ITO, Ward 1(5) , Allahabad-211001, U.P.
3. CIT(A) –Allahabad, U.P./ CIT(A), NFAC, Delhi
4. CIT, Allahabad-211001, U.P.
5. Sr. DR , Allahabad-211001, U.P.

By order
Assistant Registrar