

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 406/Kol/2022
Assessment Year : 2015-16

Sanjay Sharma (PAN: AQHPS 0078 F)	Vs.	ACIT, Circle-40, Kolkata
Appellant		Respondent

Date of Hearing	01.12.2022
Date of Pronouncement	05.01.2023
For the Assessee	Shri Anil Kochar, Advocate
For the Revenue	Shri Amol Kamat, CIT/DR

ORDER

Per Shri Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 21.06.2022 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'ld. CIT(A)']. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the ld. CIT(A) erred in not affording reasonable opportunity to the appellant to explain the case resulting in ex-parte order.

3. For the ld. CIT(A) miserably failed to properly appreciate the facts of the case and in confirming the action of the AO in respect of addition of Rs. 10,26,06,475/- on account of alleged bogus sundry creditors.

4. For that the ld. CIT(A) ought not to have confirmed the addition of Rs. 10,26,06,475/- made by the AO on alleged grounds.

5. For that the ld. CIT(A) erred in directing the AO for verification of the amount appearing in Form 26AS vis-à-vis books of accounts.

6. For that the ld. CIT(A) issued the direction for verification of TDS appearing in Form 26AS vis-à-vis books of accounts in contravention to the provisions of section 251 of the Act.

7. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

2. Brief facts of the case are that the assessee is an individual and filed his return of income for A.Y. 2015-16 declaring total income at Rs. 16,97,990/-. The case of the assessee was selected for scrutiny through CASS under limited scrutiny and notices u/s 143(2) and 142(1) were issued upon the assessee. In response to the notices, AR of the assessee appeared and file requisite documents in such notices. During the assessment proceeding, the ld. AO noticed that the assessee had made certain transactions with different parties and assessee has also shown sundry creditors totaling of Rs. 10,26,06,475/- for the financial year 2014-15. During the assessment proceeding, the assessee could not able to produce any details about the sundry creditors and failing to discharge by providing names and address to the creditors. Therefore, the amount of Rs. 10,26,06,475/- is added back to the total income of the assessee u/s 41(1) of the Act. Besides that the ld. AO on perusal of the books of account submitted by the assessee and Form No. 26AS, the ld. AO found that there were mismatch of different parties during the assessment year in question. The ld. AO asked the assessee to submit reasons for such discrepancies but the assessee failed to submit any reply within the stipulated time prescribed by the AO, therefore, the AO added back of Rs. 36,42,987/- to the total income of the assessee.

3. Dissatisfied with the above order, assessee preferred an appeal before the Ld. CIT(A). However, the appeal of the assessee was partly allowed by the ld. CIT(A).

4. Aggrieved by the above order, the assessee is in appeal before the Tribunal raising multiple grounds of appeal. However, the main grievance of the assessee is that while passing the impugned order against the assessee, no reasonable opportunity has been given to the assessee and order was passed ex-parte.

5. At the time of hearing, the ld. counsel for the assessee submitted before us that since the impugned order has been passed ex-parte and assessee could not able to file necessary documents and its submission. Therefore, the impugned order was bad in law and further prays before us that one more opportunity may be given to the assessee and the issues of the instant appeal may be set aside to the file of ld. AO by providing opportunity to submit all relevant evidences and supported documents to substantiate its claim.

6. The ld. DR was fair enough not to oppose such request made by the ld. AR. We, therefore, under the given facts and circumstances of the case, we are of the considered view that since the impugned order passed by the ld. CIT(A) did not decides the issue on merits of the case. Therefore, we in the interest of justice set aside the impugned order and remit it back to the file of AO for deciding the issue raised before us by way of speaking order. We also direct the assessee to furnish such evidence in support of its claim and remain vigilant in receiving the notice from the ld. AO. It is also clarified that assessee should not request for any further adjournment unless otherwise required for reasonable cause and should file all necessary evidence/documents in support of its claim so as to facilitate the ld. AO for passing the order in accordance with law. Needless to mention that assessee should be given proper opportunity of being heard.

7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05.01.2023.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 05.01.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sanjay Sharma, 191, Rabindra Sarani, 1st Floor, Kolkata-700 007.
2. Respondent – ACIT, Circle-40, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata