

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.4183/Del/2017  
(Assessment Year : 2012-13)

Ankur Goyal C-102, Arihant Harmony Ahinsa Khand-II, Indirapuram, Ghaziabad PAN : AHEPG9301R	Vs.	Income Tax Officer, Ward-1(1), Ghaziabad
Appellant		Respondent

Assessee by	Sh. H. Hasnain, AR
Revenue by	Shri Kanv Bali, Sr. DR

Date of hearing:	04.01.2023
Date of Pronouncement:	04.01.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Assessee against order dated 31.03.2017 in Appeal No. 100/2015-16/GZB assessment year 2012-13 passed by Commissioner of Income Tax (appeals), Ghaziabad (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 27/02/2015 u/s 143(3) of the Income Tax Act, 1961 passed by the Income

Tax Officer, Ward-1(1), Ghaziabad (hereinafter referred to as the Assessing Officer or 'AO').

2. Heard and perused the record.

3. As the case was called for hearing it transpired that amongst other grounds on merits, the appellant assessee has raised ground no. 1 for challenging the disposal of appeal ex-parte without hearing the assessee.

4. In this regard Ld. DR submitted that Ld. CIT(A) had given fair opportunity and same is reflected in the order.

5. Giving thoughtful consideration to the matter on record it can be observed that indeed Ld. CIT(A) in his order in para no. 4 mentions of the number of hearing and the opportunity sought by the appellant on various grounds. The order of Ld. CIT(A) reflects that adjournment was sought on the ground of ill health of the AR for which the medical certificate was also enclosed. However, Ld. CIT(A) was not convinced with the grounds for adjournment and declined to give the adjournment calling the plea to be evasive.

6. The Bench is of considered opinion that the request was made on the ground of ill health of one of the AR Sunil Tyagi and another AR Sunil Kumar was present, whose presence was also marked in the order. Thus, Ld. CIT(A) committed error in making in order of dismissal for non-prosecution and also sustaining the additions on merits. There is no justification to dismiss the appeal for non-prosecution while marking the presence of AR and also decide issues on merits. Such a recourse is not known under law. Thus, the ground no. 1 as raised deserves to be sustained. The impugned order dated 31.03.2017 of Ld. CIT(A) is set aside and Ld. CIT(A) is directed to pass a fresh order giving effective

opportunity of hearing to the appellant. **The appeal is allowed for statistical purposes.**

**Order pronounced in the open court on 4<sup>th</sup> January, 2023.**

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:- 04.01.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI