

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH(SMC)(HEARD BY DIVISION BENCH), ALLAHABAD
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 10/ALLD/2023
Assessment Year: 2016-17

Sh. Sanjay Kumar Kesarwani 22C, Katghar, Allahabad- 211003, U.P.	v.	Income-Tax Officer WARD-1(5), Allahabad , U.P.
PAN: ADRPK0376P		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Kumar Yadav, Advocate
Respondent by:	Shri A. K. Singh, Sr. DR
Date of hearing:	16. 03. 2023
Date of pronouncement:	16.03. 2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, being ITA No. 10/Alld/2023, is directed against an ex-parte appellate order dated 01.12.2022 in Appeal No. CIT(A), Allahabad/10072/2019-20 passed u/s 250 of the Income-tax Act, 1961(hereinafter called "the Act") by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre(NFAC), Delhi(hereinafter called "the CIT(A)"),forassessment year(ay):2016-17(DIN & Order No. ITBA/NFAC/S/250/2022-23/1047750063(1)) , the appellate proceedings had arisen before learned CIT(A) from assessment order dated 11.12.2018 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the 1961 Act for ay: 2016-17(Order No. ITBA/AST/S/143(3)/2018- 19/1014201457(1). This appeal is heard by Division Bench of Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, in Open Court Proceedings through

physical hearing mode.

2. The brief facts of the case are that the assessment in the case of the assessee was framed by AO u/s 143(3) of the 1961 Act , vide assessment order dated 11.12.2018 , wherein additions to the tune of Rs. 14,29,221/- to the income of the assessee were made by the AO , to the returned income of the assessee.

3. Aggrieved by assessment framed by the AO, the assessee filed first appeal with learned CIT(A), who dismissed the appeal of the assessee in an ex-parte appellate order dated 01.12.2012 passed by learned CIT(A).

4. The assessee being aggrieved by the aforesaid appellate order passed by learned CIT(A) has filed second appeal with Income-Tax Appellate Tribunal, Allahabad (hereinafter called “ the tribunal”) and as many as five grounds of appeal are raised by assessee in memo of appeal filed with the tribunal.

5. This appeal was heard by Division Bench of the tribunal . The ld. Counsel for the assessee opened arguments before the Bench and stated that it is an ex-parte appellate order passed by learned CIT(A) where in appeal of the assessee was dismissed by ld. CIT(A) ex-parte in the absence of assessee in limine without discussing the issues on merits. The ld. Counsel for the assessee also submitted that notice of hearing dated 15.11.2022 issued by ld. CIT(A) asking assessee to file response latest by 22.11.2022 was duly received by the assessee, and the assessee filed request for adjournment on 22.11.2022 before ld. CIT(A), seeking time until 07.12.2022 to file written submissions and paper book before ld. CIT(A) , but ld. CIT(A) dismissed the appeal of the assessee on 01.12.2022 in limine without discussing the issues in the appeal on merit. The evidence to that effect for filing aforesaid response on 22.11.2022 , is placed on record in file.. It was submitted that ld. CIT(A) ought to have decided the issue's in appeal on merit as is required u/s 250(6) of the 1961 Act, but the appellate order was passed ex-parte in limine by ld. CIT(A) without giving independent reasoning of his own . It was submitted that

even facts stated in the statement of facts were reproduced by Id. CIT(A) in his order but the same were not considered on merits by Id. CIT(A) . The Id. Counsel for the assessee has during the course of hearing before DB, also filed paper book containing 36 pages, which comprises written submissions as well replies on merit filed before AO and the case laws , to substantiate its contentions on merits and on law . The learned counsel for the assessee prayed that the matter may be set aside to the file of Id. CIT(A) for denovo adjudication, as the submissions/evidences need to be evaluated/verified and adjudicated by Id. CIT(A) on merits . The Id. Counsel for the assessee stated that the assessee will duly co-operate with learned CIT(A) when the appeal will come up for hearing before learned CIT(A) in second round of litigation . The Id. Sr. DR fairly submitted that Revenue has no objection if the matter is restored to the file of learned CIT(A) for fresh adjudication on merits in accordance with law.

6. We have heard rival parties and perused the material on record. We have observed that the case of the assessee was selected by Revenue for limited scrutiny through CASS for the reasons of cash deposits in the bank during demonetization period and to verify that said cash deposit were from disclosed sources, by invoking provisions of Section 143(2) of the 1961 Act , which culminated into assessment order dated 11.12.2018 passed by AO u/s 143(3) of the 1961 Act , wherein additions to the income of the assessee to the tune of Rs. 14,29,221/- were made by the AO to the returned income of the assessee. The assessee filed first appeal before learnedCIT(A). The learned CIT(A) gave as many as four opportunities of hearing to the assessee as are stated/extracted in the appellate order passed by learned CIT(A), but the assessee did not comply with the notices as no submissions on merits of the additions were filed by the assessee before Id. CIT(A), who then dismissed 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 assessment

order passed by the AO was upheld by learned CIT(A) by dismissing appeal of the assessee, by holding asunder:

“6. The facts and grounds of appeal have been carefully considered.

7. Though the appellant claims that the AO was not justified in making such assessment, he never put forth any reason for claiming so. Even during current appellant proceedings, the appellant never came forward with his explanation to the grounds mentioned by the appellant despite being offered number of opportunities through hearing notices issued by this office. The onus lies on the appellant to prove his case before seeking relief in the appellant proceedings. On this front, appellant miserably failed. In these circumstances, it is deemed fit not to interfere with the assessment made by the AO. Accordingly, the addition made by the AO is upheld and grounds are disallowed.

8. In the result, the appeal of the appellant is disallowed.”

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, but the same is not followed by ld. CIT(A) and issues were not discussed and decided by ld. CIT(A) on merits by giving its own independent reasoning before dismissing appeal filed by assessee. 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. As is emanating from appellate order passed by ld. CIT(A), as many as four notices of hearing were issued by ld. CIT(A), dated 24.12.2020, 07.12.2021, 23.2.2022 and 15.11.2022, but the assessee did not comply with the aforesaid notices. It is on 22.11.2022, the assessee filed for adjournment of hearing to 07.12.2022, but ld. CIT(A) refused to grant adjournment in view of several opportunities earlier granted to the assessee. Thus, assessee is equally to be blamed for its woes. Now, before us, both the parties have fairly submitted that keeping in view facts and circumstances of the case, 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 and in the interest of

justice , we are of the considered view that the interest of justice will be served if the appellate order dated 01.12.2022 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 the appeal filed by assessee with learned CIT(A). Needless to say that the learned CIT(A) shall give proper and adequate opportunity of being heard 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 clarify that we have not commented on the merits of the issue in appeal. We order accordingly.

7. In the result, the appeal filed by the assessee with tribunal in ITA No. 10/Alld./2023 for ay: 2016-17 is allowed for statistical purposes, as indicated above.

Order pronounced in the open court on 16/03/2023 at Allahabad,U.P. at the conclusion of hearing in the presence of both the parties

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 16/03/2023

Copy forwarded to:

1. Appellant –Sh. Sanjay Kumar Kesarwani, 22C, Katghar,Allahabad-211003, U.P.
2. Respondent – ITO, -1(5), Aayakar Bhawan, 38, M G Road, Allahabad, U.P.
3. CIT(A) –National faceless Appeal Centre(NFAC), New Delhi/ CIT(A), Allahabad, U.P.
4. CIT, Allahabad, U.P.
5. Sr. DR, ITAT, Allahabad, U.P.
6. The Guard File

ITA No.10/ALLD/2023
Assessment Year: 2016-17
Sanjay Kumar Kesarwani, Prayagraj, U.P. v. ITO 1(5)
By order
Assistant Registrar