

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.38/Pat/2023
Assessment Year: 2017-18**

Awdhesh Kumar S/o, Tarkeshwar Roy, Mahammadpurbabuchak, Phulwarisharif, Patna, Bihar-801113 (PAN: DEYPK1076K)	Vs.	Income Tax Officer, Ward-4(1), Patna.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Rakesh Kumar, Advocate
Respondent by : Shri Rupesh Agrawal, Sr. DR

Date of Hearing : 11.05.2023
Date of Pronouncement : 17.05.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1043906093(1) dated 18.07.2022 against the order of ITO, Ward-4(1), Patna u/s. 144 r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 05.12.2019 for AY 2017-18.

2. Registry has noted that the appeal of the assessee is time barred by 152 days. The assessee has filed a condonation petition, which is available on record, wherein assessee has explained the reason sufficiently for the delay. It is stated that counsel of the assessee had

died during Covid-19 whose e-mail ID was registered in the I T profile of the assessee, and the notices for hearing were sent on this e-mail ID which could not be attended. It is prayed that the delay in filing of the appeal is unintentional, bonafide and beyond his control so, the delay may be condoned and the appeal be taken up for hearing. We after hearing both the sides condone the delay in filing the appeal and admit the appeal for hearing.

3. We note that the ld. CIT(A) has passed *ex parte* order and has not decided the case on merits. The ld. CIT(A) only noted that the non-appearance to notices is deliberate as all the five (5) notices have been duly served upon the assessee on the registered e-mail address. He noted that none appeared on behalf of assessee inspite of notices had been served, so according to him, the assessee was not interested to pursue the appeal and he dismissed the appeal. However, we note that the assessee had filed before the ld. CIT(A) 12 (Twelve) grounds of appeal as well as filed the statement of facts. However, the ld. CIT(A) has dismissed the appeal without passing a speaking order, which action of the ld. CIT(A) cannot be countenanced.

4. It should be kept in mind that if an assessee is aggrieved by the order of the AO, then assessee has the statutory right to file an appeal before the ld. CIT(A). This valuable/statutory right of the assessee cannot be lightly brushed aside by passing non-speaking order. We expect the assessee to be diligent while pursuing the appeal.

4.1. Section 250 of the Act deals with procedure in appeal by the Commissioner (Appeals). Sub-section (6) of section 250, in particular reads as under:

“The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

4.2. On perusal of Sec. 250(6) of the Act, we find that the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision, which is not so in the present case. Accordingly, the impugned order of the Ld. CIT(A) is set aside and the appeal is restored back to him with the direction to pass a speaking order by going through the statements of facts as well as oral/written submissions/documents, if any, filed by the assessee. The assessee is directed to be diligent and appear or/and file necessary papers before him, if required, by affording reasonable opportunity of being heard.

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

Order pronounced in the open Court on 17th May, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17th May, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), NFAC, Delhi
 4. CIT, Patna
 5. DR, ITAT, Patna Bench, Patna
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata