

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Dr. Manish Borad, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 150/KOL/2023
Assessment Year: 2011-2012**

**Sk. Saiful Ali,.....Appellant
Raj Stile, Khajanchak,
Durgachak, Haldia,
Purba Medinipur-721602
[PAN: AKIPA2468E]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-27(1), Haldia,
Durgachak, Haldia,
Purna Medinipur-721602**

Appearances by:

*Shri Soumitra Choudhry, A.R., appeared on behalf of the
assessee*

*Shri Vijay Kumar, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : April 12, 2023

Date of pronouncing the order : June 13, 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of assessee for assessment year 2011-12 is directed against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 10.12.2022,

which is arising out of the order under section 144 of the Act on 26.12.2017 framed by Id. ITO, Ward-27(1), Haldia.

2. The Registry has pointed out that the appeal is time-barred by 19 days. In order to explain the delay, the assessee has filed COD along with the affidavit mentioning the reason for the delay in filing the instant appeal that the same was happened on account of the then Id. Authorized Representative, who was looking after the taxation matter and he did not file the appeal in time. According to the assessee, he was not properly guided by the said Advocate and thereafter handed over it to the new Advocate to file and then after preparing the memorandum, grounds of appeal, statement of facts and other formalities to be completed and filed belatedly praying to hear the appeal on merit as there was no default on his part in representing the appeal and for this, submission of appeal is time-barred.

3. On due verification of these facts, we find the submission correct and, therefore, we condone the delay, if any, in filing the appeal before the Tribunal.

4. The assessee has raised the following grounds of appeal:-

(1) For that on the facts of the case, the order passed by the Ld. CIT(A), NFAC on 10.12.2022 which is completely arbitrary, unjustified and illegal.

(2) For that on the facts of the case, the Ld. C.I.T.(A) was wrong in not considering the merit of the case, therefore, the order passed by the Ld. C.I.T.(A) is completely arbitrary, unjustified and illegal.

(3) For that on the facts of the case, both Ld. CIT(A) as well as the A.O. was wrong in reopening the assessment u/s.147 r.w.s. 148 of the Income Tax Act on 30.03.2017 after a lapse of 4 years without any new evidences, therefore, the reopening of assessment u/s. 148 is baseless and should be quashed.

(4) For that the reopening of assessment u/s 148 of the IT Act 1961 was on borrowed satisfaction and not on any independent application of mind by the assessing officer and hence the reopening be declared to be bad in law and the reassessment order be quashed.

(5) For that on the facts of the case, the impugned order is at best capable of being classified as a case of mere change of opinion, hence, the assessment is bad in law should be quashed.

(6) For that on the facts and in the circumstances of the case, the Ld CIT(A) was not justified in making additions by the A.O. of Rs. 23,43,114/- on account of bogus Sundry Creditors which is completely arbitrary, unjustified and illegal.

(7) For that on the facts and in the circumstances of the case, the Ld CIT(A) was not justified in making additions by the A.O. of Rs. 3,44,640/- on account of Machine Hire Charges which is completely arbitrary, unjustified and illegal.

(8) For that on the facts and in the circumstances of the case, the Ld CIT(A) was not justified in making additions by the A.O. of Rs. 10,00,000/- as unexplained investment in purchase of stall on estimate basis which is completely arbitrary, unjustified and illegal.

(9) For that on the facts of the case, the Ld. CIT(A) was wrong in confirming not allowing u/s. 80C of Rs.16,834/- under chapter VIA which is completely arbitrary, unjustified and illegal.

5. Though the assessee has raised nine grounds of appeal but the main issues involved namely- (a) is against the addition of Rs.23,43,114/- made by the ld. Assessing Officer on account of bogus sundry creditors, (b) against the addition of Rs.3,44,640/- on account of machine hire charges, (c) against the addition of Rs.10,00,000/- as unexplained investment in purchase of stall on estimate basis and (d) against the addition of Rs.16,834/- for not allowing deduction under section 80C of the Act.

6. We have heard the rival contentions and gone through the material placed before us. From the record, we find that the assessment order passed under section 144/147 of the Act dated 26.12.2017 is an ex-parte order without discussing the merit of the issues. The ld. CIT(Appeals) upheld the order of ld. Assessing Officer by holding that the AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for and dismissed the grounds of appeal raised by the assessee.

7. By considering the totality of the facts and circumstances of the case, we are of the view that the ld. CIT(Appeals) was not justified in confirming the order of ld. Assessing Officer without discussing the issues on merit. Sub-section (6) of section 250 contemplates that ld. CIT(Appeals) would determine the points in dispute and thereafter records reasons in support of his

conclusion on those points. A perusal of the order of Id. CIT(Appeals) would reveal that it is a non-speaking order, which does not deal with any of the issues agitated in the grounds of appeal before CIT(A) or issues taken up in the assessment order. The impugned orders are not sustainable on account of non-speaking orders. Therefore, we set aside both the orders and restore this issue to the file of Id. Assessing Officer for *denovo* adjudication. The Id. Assessing Officer is directed to collect complete facts and discuss lucidly in the order required to be passed by him after this restoration.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 13th June, 2023.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 13th day of June, 2023

*Copies to :(1) Sk. Saiful Ali,
Raj Stile, Khajanchak,
Durgachak, Haldia,
Purba Medinipur-721602*

*(2) Income Tax Officer,
Ward-27(1), Haldia,
Durgachak, Haldia,
Purna Medinipur-721602*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

- (4) Commissioner of Income Tax- ;*
(5) The Departmental Representative
(6) Guard File
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.