

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.101/Asr/2023
Assessment Year: 2017-18**

Savraj Enterprises, SIDCO Industrial Complex IGC Samba (Jammu & Kahsmir). [PAN:-ABZFS9725J] (Appellant)	Vs.	DCIT-Central Circle, Jammu. (Respondent)
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Appellant by	Sh. P. N. Arora, Adv.
Respondent by	Sh. Hitendra Bhauraoji Ninawe, CIT.DR

Date of Hearing	14.06.2023
Date of Pronouncement	21.06.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-5,Ludhiana,[in brevity ‘the CIT(A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity ‘the Act’] for

A.Y. 2017-18. The impugned order was emanated from the order of the Id. DCIT, Central Circle, Jammu order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1. That the order passed by the Assessing Officer as well as order of the Learned Commissioner of Income Tax (Appeals)-5, Ludhiana are both against the facts of this case and is untenable under the law.

2. That no reasonable and proper opportunity of being heard was allowed by the AO before passing the said order. As such the order passed is liable to be cancelled. Similarly, the worthy CIT(A) is also grossly erred in confirming the order of the AO. As such the order passed by the CIT(A) is also bad in the eyes of law and the same is liable to be cancelled.

3. That the Ld CIT(A) has grossly erred in deciding the case ex-parte without appreciating the facts of this case. The CIT(A) did not appreciate that the notices sent through email were never received by the assessee as the password was available with my counsel who was not aware of the appeals. As such there was no reason and occasion for deciding the case ex-parte and as such the assessment order passed is bad in the eyes of law and the same is liable to be cancelled.

4. That even the case was not decided on merits while deciding the case ex-parte. It was mandatory for the CIT(A) to

decide the case on merits which the worthy CIT(A) failed to do so. As such the order passed by the CIT(A) is bad in the eyes of law and the same is liable to be cancelled/quashed and a fresh opportunity of being heard may be allowed on merits as well as on law.

5. That any other grounds of appeal which may be argued at the time of hearing of appeal.”

3. Brief fact of the case is that the survey was conducted in assessee's premises U/s 133A of the Act. The assessee had deposited cash in bank account amount to Rs. 7,94,65,000/-. Out of which amount to Rs. 7,94,05,000/- was in old demonetized currency. The assessee explained the cash deposited out of cash credit amount to Rs. 7,99,96,371/- which was entered in the books of accounts for period 06-10-2016 to 08-11-2016 in respect of alleged advance shown to have been received from various customer. The assessment was completed with addition amount of Rs.7,99,96,371/- for unexplained cash credit and deduction claimed by the assessee u/s 80 IB amount to Rs.2,90,673/-. The assessee was unable to explain the cash credit amount to Rs.7,99,96,371/- before the Id. AO. Accordingly, the addition was made u/s 68 and chargeable the tax u/s 115BBE of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

4. The ld. AR first prayed that the appeal was passed *ex parte* without considering the submission of the assessee. The ld. AR placed that the *audi altrem partem* was denied against the assessee by representing the matter before the ld. CIT(A). The assessee placed written submission which is kept in the record.

5. The ld. DR vehemently argued and placed that eleven hearing dates were allowed to the assessee in appeal which were remained unattended before the ld. CIT(A).

6. We heard the rival submission and relied on the documents available in the record. The ld. AR placed that the ld. CIT(A) has passed the order without considering the ground and fact of the case. The assessee was unable to appear for none receiving the notice. The ld.AR prayed for setting aside the matter to the ld. CIT(A) for further adjudication *de novo*. The ld. DR had not made any strong objection against the prayer of ld. AR. There is plausible cause for no appearance before the 1st appellate authority. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is *set aside* and the matters are remitted back to the ld. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate

procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

7. In the result, the appeal of the assessee bearing **ITA No. 101/Asr/2023** is allowed for statistical purpose.

Order pronounced in the open court on 21.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order