

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 62/Del/2023
(Assessment Year: 2011-12)

VEDAPAL, H. No. 143, Moh Ramnagar, Gulaothi Gulavathi, Rupali Natthuga, Bulandhahr, Uttar Pradesh (Appellant) PAN: AXWPV6716H	Vs. ITO, Ward-2(3)(3), Bulandshahr (Respondent)
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Assessee by :	Shri Nitin Jindal, CA
Revenue by:	Shri Om Parkash, Sr. DR

Date of Hearing	06/04/2023
Date of pronouncement	23/06/2023

ORDER

1. This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC) dated 09.11.2022 for AY 2011-12.

2. Id counsel of the assessee submitted that neither the AO nor the Id CIT(A) has allowed due opportunity of hearing to the assessee therefore, the AO has passed order u/s 144/ 147 of the Income Tax Act, 1961 (for short 'the Act') and the Id CIT(A) has also dismissed the appeal of the assessee ex parte in a cryptic manner without adjudicating the grounds of assessee raised along with Form 35. The Id counsel submitted that the assessee is less literate farmer and does not know how to attain proceedings before the tax authorities. There is a bona fide lapse/ omission on the part of the assessee in assessment proceedings before the authorities below but in the

interest of justice the assessee should be allowed to place all his arguments, explanation along with relevant documentary evidence before the AO.

3. Replying to the above the Id Sr. DR strongly opposed to the submission of the Id counsel of the assessee and submitted that the despite several notices of the AO and the Id CIT(A) the assessee did not attend the proceedings and therefore, they have no alternative but to pass an ex-parte order against the assessee. However, in all fairness the Id Sr. DR candidly submitted if it is found just and proper then the department has no serious objections if the matter be restored to the file of the AO for fresh adjudication after allowing due opportunity of hearing to the assessee.

4. On careful consideration of the above submission first of all from the orders of the authorities below I clearly note that despite sufficient notice the assessee did not attend proceedings before the AO as well as before the Id CIT(A), hence, ex parte orders have been passed by them. The Id Sr. DR has not disputed the very relevant fact that the assessee is a less literate farmer residing in a village therefore, in a non-deliberate lapse and omission not attending proceedings cannot taken as a basis to punish the assessee, depriving him from opportunity of being heard by the AO. Therefore, I find it just and proper to allow the assessee an opportunity of being heard before the AO and hence, the matter is restored to the file of AO in de novo framing the assessment order after allowing due opportunity to the assessee and without being influenced from the earlier assessment and first appellate order. As I have noted above despite several notices by the AO and Id CIT(A) the assessee did not attend the proceedings I deem it appropriate to impose a cost of Rs. 5,000/- to the assessee and direct him to deposit the same with the department under appropriate head.

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

Order pronounced in the open court on 23/06/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 23/06/2023
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi