

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 146/Jodh/2022  
(ASSESSMENT YEARS- 2013-14 )**

Jai Prakash Suwalka Prop. Jagdish Lal Jaiprakash Suwalka 138, Krishi Upaj Mandi, Udaipur-313001.	Vs	Income Tax Officer TDS, Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. ADAPS 8968 C</b>		

(Virtual Hearing)

<b>Assessee By</b>	Shri Rakesh Lodha -C.A.
<b>Revenue By</b>	Shri S.M. Joshi, JCIT-DR
<b>Date of hearing</b>	13/07/2023
<b>Date of Pronouncement</b>	14 /07/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

The assessee has filed an appeal against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 15.09.2022 for the assessment year 2013-14.

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

“1. That on the facts, circumstances of the case and law, the Id. CIT(A)/NFAC erred in confirm order of Income Tax Officer claiming that

there was no adjournment application filed by appellant, contrary to adjournment application submitted at portal on 08.09.2022, thus, said order is without providing an opportunity to furnish the appeal reply, is bad in law and deserves to be hold null and void.

2. That on the facts, circumstances of the case and law, the ld. CIT(A)/NFAC erred in upholding the contention of Income Tax Officer (TDS), Udaipur in invoking provisions of section 206C(6A)/206C(7) of Act on the sales of Maua on the sole basis of Rajasthan State Govt notification dated 27.10.2014.

3. That ld. CIT(A) also erred in holding the assessee in default for sale of Mahua to consumer buyers for non-collection of TCS of Rs. 5,29,150/- u/s 206C(6A) and interest thereon of Rs. 481,527/- u/s 206C(7) of the Act, ignoring the definition of buyer u/s 206C(11) of the Act.

4. The appellant craves leave to add, alter, amend, modify and/or delete all or any of the grounds of the appeal on or before the final hearing, if necessary.”

3. Brief facts of the case are that the assessee is engaged in the business of retails trading of Kirana Items including Mahua Flowers. The ld. ITO, TDS has invoked the provisions of Section 206C(1) and treating assessee in default u/s 206C(6) for charged liability of TCS of Rs. 5,29,150/- @ 2.50% and interest of Rs. 4,81,527/- thereupon for sale of Mahua Flowers treating it as Forest Produce based on Rajasthan State Notification dated 27.10.2014.

4. Being aggrieved the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) observed that notices were issued on 22.07.2022, 22.08.2022 & 01.09.2022 requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued by the Id. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“In this case, Notice was issued on 22.07.2022 to the appellant to furnish written submissions and documents on or before 29.07.2022. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/ information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 22.08.2022 to the appellant to furnish written submissions, information and documents on or before 30.08.2022. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing further to say in the matter and the appeal would be decided on merits on the basis of material available on record. No written submissions/ information/ documents were received, nor any adjournment sought. Accordingly, yet another notice was issued on 01.09.2022 to the appellant to furnish written submissions, information and documents on or before 08.09.2022. In view of the fact that no written submissions/ information/ documents have been received till date from the appellant nor any adjournment sought, appeal is being decided on the basis of material available on record.

Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of order dated 23.03.2020 filed by the appellant along with Form 35. The material on record has been carefully perused.

There is no material on record to warrant interference in the order of the AO. In view of the fact that there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby dismissed.”

5. As the assessee not received any favour from the appeal filed before Id. NFAC/ CIT(A). The present appeal filed against the said order of the Id. NFAC dated 15.09.2022 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:-

“ The Hon'ble Chairman and his other companion member of Income Tax Appellate Tribunal, Jodhpur

MAY IT PLEASE YOUR HONOURS,

The appellant, above named, respectfully submits as under-

That appellant preferred an appeal before this Hon'ble Tribunal having appeal No. 146/Jodh/2022. The brief facts thereof and appellant's brief synopsis of submissions are submitted herewith for necessary consideration please.

(A) FACTS OF THE CASE

1. The appellant is engaged in the business of retails trading of Kirana Items including Mahua Flowers. The Id. ITO, TDS has invoked the provision of section 206C(1) and treating assessee in default u/s 206C(6) for charged liability of TCS of Rs. 529,150/- @ 2.50% and interest of Rs. 481,527/- thereupon for sale of Mahua Flowers treating it as Forest Produce based on Rajasthan State Notification dated 27-10-2014.
2. The appellant has filed an appeal before Id. CIT(A), which was dismissed ex party alleging neither submission was made nor adjournment was sought.

3. So, the appellant is in appeal before this Hon'ble Bench against the order dated 24/03/2022 of NFAC, CIT (Appeal).

Grounds of appeals are:

1. That on the facts, circumstances of the case and law, the Id. CIT(A), NFAC erred in confirm order of Income Tax officer claiming that there was no adjournment application filed by appellant, contrary to adjournment application submitted at portal on 08-09-2022, thus, said order is without providing an opportunity to furnish the appeal reply, is bad in law and deserves to be hold null and void.

2 That on the fact of case and in the law, the Id. CIT (A), NFAC grossly erred in upholding the contention of Income Tax Officer (TDS), Udaipur in invoking provisions of section 206C(6A) / 206C(7) of Act on the sales of Mahua on the sole basis of Rajasthan State Govt Notification dated 27-10-2014.

3. That Id. CIT(A) also erred in holding upholding the assessee in default for sale of Mahua to consumer buyers for non-collection of TCS of Rs. 529,150/- u/s 206C(6A) and interest thereon of Rs. 481.527/- u/s 206C(7) of the Act, ignoring the definition of buyer u/s 206C(11) of the Act.

3.1 The appellant humbly submitted that the first appeal was fixed for hearing on dated 08-09-2022 vide notice dated 01-09-2022, time on that date appellant has submitted an online adjournment application and sought 15 days. The copy of screen shot of adjournment application is enclosed herewith.

3.2 The Id. CIT(A), NFAC either mistakenly not seen the adjournment application or same was not displayed to him by the portal, so, he has cited the reason for ex party order at page 3 that neither written submission nor adjournment was sought, so appeal is decided ex party. Since, this was an apparent erroneous observation, so, the appellant humbly request the Hon'ble Bench to kindly set aside the order to the CIT(A) for providing an opportunity to put forth his case before the first appellate authority.

3.3 As the reply to the grounds of appeal would contains fresh evidences or documents etc before the Hon'ble Bench and which may lead to excessive consumption of time, appellant humbly prays for the set aside the order back to the Ld CIT(A), NFAC to allow him an opportunity to submit the evidences, explanation, documents and reply on the grounds of appeal raised by him in the form no. 35. It is pertinent to state that in the interest of natural justice and doctrine of Audi Alteram partem appellant request may kindly be considered and set aside the appeal. The appellant assures that he will submit the replies and documents before the CIT(A) without any failure.

Therefore, in-view of facts and circumstances the prayer for set aside may kindly be admitted and oblige.”

6. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

7. We have heard both the parties and perused the materials available on record. The bench observed that Ld CIT(A) fixed hearing on dated 08-09-2022 vide notice dated 01-09-2022, at time on that date assessee has submitted an online adjournment application and sought 15 days but the Id. CIT(A), NFAC either mistakenly not seen the adjournment application or same was not displayed to him by the portal. We are of the observation that to set aside the order back to the Ld CIT(A), NFAC to allow him an opportunity to submit the evidences, explanation, documents and reply on the grounds of appeal raised by him in Appellate proceedings It is undisputed fact that the assessee was granted several adjournments by the ld. CIT(A) to argue the case but the assessee remained non-cooperative and negligent in pursuing his case on the dates of hearing of the appeal before the ld. CIT(A). However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case before the ld. CIT(A)

and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question. In this view of the matter, the appeal of the assessee is restored to the file of the ld. CIT(A), with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. CIT(A). Thus the appeal of the assessee is allowed for statistical purposes.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. CIT(A) independently in accordance with law.

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

Order pronounced in the open court on 14/07/2023.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 14/07/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench