

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

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

**ITA Nos. 152/Jodh/2022
(ASSESSMENT YEARS- 2014-15)**

Jai Prakash Suwalka Prop. Jagdish Lal Jaiprakash Suwalka 138, Krishi Upaj Mandi, Udaipur-313001.	Vs	Addl. Commissioner of Income Tax, Range-TDS, Udaipur.
(Appellant)		(Respondent)
PAN NO. ADAPS 8968 C		

(Virtual Hearing)

Assessee By	Shri Rakesh Lodha -C.A.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	13/07/2023
Date of Pronouncement	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 2014-15.

2. At the outset of hearing, the Bench observed that there is delay of 2 days in filing the appeal by the assessee for which the ld. AR submitted that to arrange all the papers concerning the issue in question, the delay took

place which was not intentional and thus the delay of small 2 days may kindly be condoned.

3. During the course of hearing, the ld. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

4. We have heard both the parties and perused the materials available on record. The Bench Noted that the assessee for condonation of delay of 02 days has merit and we concur with the submission of the assessee. Thus the delay of 02 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

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

“1. That on the facts, circumstances of the case and law, the ld. CIT(A)/NFAC erred in confirm penalty u/s 271CA of Rs. 531,158/- as levied by the Income Tax Officer, though, the principle/quantum appeal was pending before the CIT(A).

2. That on the facts, circumstances of the case and law, the ld. CIT(A)/NFAC grossly erred in passing of an ex parte order in haste and without giving sufficient time and opportunity, is bad in law and deserves to be hold null and void.

3. That ld. CIT(A) also erred in upholding the assessee in penalty u/s 271CA of the Act of Rs. 531,158/- ignoring the fact of reasonable and sufficient cause u/s 273B of the Act.

4. On the facts and circumstances of the case, the Id. CIT(A) and Income tax Officer erred in confirming the penalty levied u/s 271CA without considering the contention of the appellant of non applicability of TCS provisions of section 206C(1) on consumer buyers of Mahua.

5. 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.”

6. Brief facts of the case are that the assessee is engaged in the business of retails trading of Kirana Items including Mahua Flowers. The Id. 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. 5,31, 158/- @ 2.50% and interest of Rs. 4,83, 354/- vide order dated 18.10.2021 for sale of Mahua treating it as Forest Produce based on Rajasthan State Notification dated 27.10.2014 The assessee has preferred an appeal against the said order u/s 206C(6) on dated 30.06.2021 and it is pending for disposed before Id. CIT(A).

7. 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 19.07.2022, 28.07.2022 and 02.09.2022 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 ld. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the ld. CIT(A) is reproduced as under:-

“In this case, Notice was issued on 19.07.2022 to the appellant to furnish written submissions and documents on or before 26.07.2022. 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 28.07.2022 to the appellant to furnish written submissions, information and documents on or before 05.08.2022. 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 02.09.2022 to the appellant to furnish written submissions, information and documents on or before 09.09.2022. 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 penalty order dated 18.10.2021 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.”

8. 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 5 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:-

“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. 531,158/- @ 2.50% and interest of Rs. 483,354/- vide order dt 18-10-2021 for sale of Mahua Flowers treating it as Forest Produce based on Rajasthan State Notification dated 27-10-2014. The appellant has preferred an appeal against said order u/s 206C(6) on dated 30-06-2021 and it is pending for disposal before CIT(A), NFAC.
2. Meanwhile, the addl CIT, TDS without waiting for disposal of first appeal levied penalty u/s 271CA of Rs. 531,158/- for default in TCS. Aggrieved by that penalty order, the appellant ha preferred an appeal before CIT(A) 25-11-2021, which was dismissed by CIT(A) NFAC for non attendance on 09-09-2022.
3. So, the appellant is in appeal before this Hon'ble Bench against the order dated 15/09/2022 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 the penalty u/s 271CA of Rs. 531,158/- as levied by the Income Tax officer, though, the principle / quantum appeal was pending before the CIT(A).
2. That on the fact of case and in the law, the Id. CIT (A), NFAC grossly erred in passing of an ex parte order in haste and without giving sufficient time and opportunity, is bad in law and deserves to be hold null and void.

3. That Id. CIT(A) also erred in upholding the penalty u/s 271CA of the Act of Rs. 531,158/- ignoring the fact of reasonable and sufficient cause u/s 273B of the Act.

4. On the facts and circumstances of the case, the Id. CIT(A) and Income tax officer erred in confirming the penalty levied u/s 271CA without considering the contention of the appellant of non applicability of TCS provisions of section 206C(1) on consumer buyers of Mahua.

1.1 The appellant humbly submitted that the first appeal was fixed for hearing on dated 09-09-2022 vide notice dated 02-09-2022, the had informed his AR for seeking an adjournment, but due to some technical glitches at portal he could not sought adjournment on that. Meanwhile, it is found that the ex party dismissal order dated 15-09-2022 is passed by CIT(A), NFAC.

1.2 It is humbly submitted that there was no deliberate intention of non -compliance of hearing date, rather, it was informed to him that due to technical glitches adjournment application could not be extended by AR.

1.3 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, so, 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.”

9. During the course of hearing, the ld. AR for the assessee prayed that the ld. CIT(A) has passed the ex-parte order and the assessee was not provided adequate opportunity of being heard. Thus, the assessee may be provided one more opportunity to advance his arguments/submissions before the ld. CIT(A) in the interest of equity and justice.

10. 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.

11. 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, but 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.

12. 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