

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

ITA Nos.1670 & 1671/Del/2023

[Assessment Year : 2017-18]

Karanpal Singh, 282, Boundary Road, Civil Lines, Meerut, Uttar Pradesh-250001. PAN-BCAPS4739B	vs	Ito, Ward-2(5), Khatauli.
APPELLANT		RESPONDENT
Appellant by	Shri Mohit Kumar, Advocate	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	02.08.2023	
Date of Pronouncement	09.08.2023	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the assessee, one in quantum proceedings in **ITA No.1670/Del/2023** against the order of Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 09.03.2023 for the **assessment year 2017-18** and another in penalty proceedings in **ITA No.1671/Del/2023** against the order of Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 09.03.2023 for the **assessment year 2017-18**. The appeals are taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.1670/Del/2023 [Assessment Year : 2017-18]

2. First, we take assessee’s appeal in quantum proceedings wherein assessee has raised following grounds of appeal:-

1. *“That the A.O. has not justify in passing to order on same date same DCR No. in which address of the assessee is different. CIT(A) dismiss the appeal in a casual manner exparty.*

2. *That the A.O. ignores bank account which was available to the A.O. as reopening of the assessment is made on the basis of cash deposit in Canara bank. CIT(A) has not decided this issue at all.*
3. *That on merit also A.O. has not justified that sufficient cash was available in the form of advance of plot and sale transaction. A.O. also not considered bank withdrawal reflecting in bank account. Therefore, addition made by A.O. is not justify & CIT(A) is also silent on this facts.*
3. *That the assessee has right to add, delete or modify any grounds of appeal during the proceedings.”*

3. Brief facts giving rise to the present appeal are that the assessee was an individual, had not filed his return of income for the year under consideration. As per information in ITBA/AIMS module, the assessee had deposited cash of INR 12,23,855/- during the period 09.11.2016 to 30.12.2016 and total cash amounting to INR 14,17,955/- during Financial year 2016-17 with Canara Bank, G.T.Road, Khatauli, Muzaffarnagar. The AO issued notice u/s 142(1) of the Act, calling upon the assessee to file Income Tax Return (“ITR”) for Assessment Year 2017-18. In response thereto, the assessee did not make any compliance. Thereafter, notices u/s 142(1) and 144 of the Act were issued to the assessee but the assessee did not make any compliances to these notices. Hence, the Assessing Officer framed the assessment vide assessment order dated 17.10.2019 u/s 144 of the Act and added the total amount of INR 14,17,955/- to the total income of the assessee on account of unexplained cash credit in the account of the assessee and assessed the income of the assessee at INR 14,17,995/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal *ex-parte* to the assessee.

5. Aggrieved against this, the assessee preferred appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the impugned assessment order was passed *ex-parte* to the assessee. The assessee was not given effective representation during the course of assessment proceedings. Moreover, Ld.CIT(A) also dismissed the appeal without affording adequate opportunity of being heard.

7. On the other hand, Ld. Sr. DR submitted that the assessee has been negligent throughout the proceedings and did not appear before the lower authorities.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that the authorities below have passed *ex-parte* order. Looking to the facts placed on record, we are of the considered view that the assessee was not provided adequate opportunity of representation. We therefore, set aside the impugned order and restore the assessment to the file of Assessing Authority to frame assessment afresh after giving adequate opportunity of representation to the assessee. It is further directed that the assessee would not seek any adjournment without any reasonable cause. The assessee would also file any evidence as sought by the

AO promptly. Grounds raised by the assessee are thus, allowed for statistical purposes.

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

ITA No.1728/Del/2023 [Assessment Year : 2009-10]

10. Now, we take assessee's appeal in penalty proceedings wherein the assessee has raised following grounds of appeal:-

1. *“The A.O. imposed penalty of Rs. 1,09,540/- on the basis of assessment U/s 144 & he has not served any notice U/s 271AAC(1). Therefore, penalty imposed by A.O. is arbitrary, unjust and not according to law. The A.O. also not provides opportunity proper and being heard reasonable hence, penalty imposed by A.O. is not according to law.*
2. *That Ld. CIT(A) dismiss the appeal without considering the facts mention above.*
3. *That the assessee has right to add, delete or modify any grounds of appeal during the proceedings.”*

11. Brief facts of the case are that during the course of assessment proceedings, the AO issued notices to the assessee. The notices so issued were not complied by the assessee. Therefore, the AO imposed penalty of INR 10,000/- u/s 272A(1)(d) of the Act for non-compliance of notices.

12. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

13. Aggrieved against this, the assessee preferred the appeal before this Tribunal.

14. Ld. Counsel for the assessee submitted that before the lower authorities, it was stated that the notices were issued at a wrong address. Therefore, compliance could not be made on behalf of the assessee. He submitted that there was reasonable cause for not responding to notices.

15. On the other hand, Ld. Sr. DR submitted that the authorities below have rejected the plea of the assessee and sustained the penalty. Ld. Sr. DR strongly relied on the findings of Ld.CIT(A).

16. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. In quantum proceedings in ITA No.1670/Del/2023 [Assessment Year 2017-18], we have restored the assessment to the file of AO for decision afresh. However, looking to the facts of the present case, we are of the considered view that the assessee had given a reasonable explanation which the authorities below ought to have verified but without verifying the correctness of the claim of the assessee, the appeal of the assessee was dismissed. Therefore, looking to the totality of the present case, there was reasonable cause which prevented the assessee to comply the notices issued by the AO. We hereby, direct the AO to delete the penalty imposed on the assessee. Grounds raised by the assessee are thus, allowed.

17. In the result, appeal of the assessee is allowed.

18. In the final result, appeal of the assessee in quantum proceedings in **ITA No.1670/Del/2023 [Assessment Year 2017-18]** is allowed for statistical purposes and appeal of the assessee in penalty proceedings in **ITA No.1671/Del/2023 [Assessment Year 2017-18]** is allowed.

Order pronounced in the open Court on 09th August, 2023.

Sd/-

Sd/-

(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI