

**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.239/Asr/2023  
Assessment Year: 2011-12**

Sham Sunder Aggarwal, Kapurthala. [PAN: -AAWPA3347E] <b>(Appellant)</b>	Vs.	ITO-Ward-2, Kapurthala.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. J. S. Bhasin, Adv.
<b>Respondent by</b>	Sh. Manoj Aggarwal, Sr. DR

<b>Date of Hearing</b>	11.09.2023
<b>Date of Pronouncement</b>	14.09.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’], order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2011-12. The impugned order was emanated from the order of the Id. ITO Ward-II, Kapurthala, [in brevity ‘the AO’] order passed u/s 143(3)/147 of the Act.

2. The assessee has taken the following ground:

- “1. That the Id.CIT(A) was not justified in arbitrarily dismissing the assessee's appeal in limine and in confirming the additions of Rs.1860825/-, on a wrong premise that no explanation/submissions were made by assessee in appeal and*
- 2.That detailed submissionswithallsupporting annexures were filed on 08.07.2023 which appear to have escaped notice of the Id.CIT(A).*
- 3. That even otherwise, the Id.CIT(A) was not competent in law to dismiss the appeal in limine.*
- 4. That the impugned order being highly arbitrary, unjust and against natural justice, deserves to be set aside.”*

3. Brief fact of the case is that the assessment was completed with addition amount of Rs.18,60,824/-. As per information from State Excise and Taxation Department, the assessee was alleged to the undisclosed cash purchased from parties. The ld. AO had calculated the addition @ 5% on alleged purchase which is total carried out to Rs.18,60,824/-. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) passed the ex parte order without considering the merit of the case. As per the ld. CIT(A), the reasonable opportunity was allowed to assessee. But the assessee was not complied the notice of hearing fixed on 25.07.2023. Accordingly, the assessment order was upheld by the ld. CIT(A). Being aggrieved, the assessee filed an appeal before us.

4. The Id. AR vehemently argued and placed that the written submission before the Id. CIT(A) on dated 08.08.2023 in persuasion of the notice dated 25.07.2023. But wrongly the documents were uploaded in window enable for another appeal of the assessee for the different year. Copy of the window of the portal is duly annexed in **APB page 2 and 3**.

4.1 The Id. AR placed that the mistake is unintentional, and assessee complied in a different assessment year of the same assessee. He further placed that the matter should be remanded back to the Id. CIT(A) for further adjudication.

5. The Id. DR argued and not made any strong objection against the submission of the assessee.

6. We heard the rival submission and considered the documents available in the record. The Id. CIT(A) had made a decision in relation to this appeal in para no. 3 of the appeal order which is extracted as below:

*“3. Decision:*

*In this case, the appellant was given opportunities to represent the case on various dates. In response, the appellant on 28/06/2023 sought an adjournment for 10 days and requested for the adjournment till 07/07/2023. Accordingly, appellant's case was adjourned and hearing was fixed on 25/07/2023, however, till date nothing has been heard from the appellant. No explanation whatsoever has been offered by the appellant to justify his claims. Thus, it appears that the appellant is not*

*interested in proceeding with the appeal filed. Therefore, the appeal of the appellant is dismissed in-limine.”*

6.1 Further, we found that the entire appeal was completed without considering the merit of the case. Only the *ex parte* order is passed and dismissed the assessee's appeal. The Id. AR explained mistake which was done by the office of the advocate and is reasonable accepted. But the assessee has no intention to proceed for noncompliance before the Id. CIT(A). The assessee should get another opportunity in the interest of natural justice. 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 file of the Id. 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 **ITA No. 239Asr/2023** is allowed for statistical purposes.

**Order pronounced in the open court on 14.09.2023**

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