

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCHES, ALLAHABAD**
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No. 20/Alld/2023
Assessment Year: 2011-12

Mr. Syed Shoeb Ashraf, 516, Vill and Post Baskhari, Ambedkar Nagar-224129, U.P.	v.	The ITO, Ambedkar Nagar, U.P.
PAN:AKRPA1580C		
(Appellant)		(Respondent)

Assessee by:	None (Application)
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	14.09.2023
Date of pronouncement:	15.09.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, arising out of the appellate order dated 13.12.2022 passed by learned Commissioner of Income-tax (Appeals) (National Faceless Appeal Centre (NFAC)(DIN & Order No. ITBA/NFAC/S/250/2022-23/1047968275(1)-Appeal No. CIT(A), Faizabad/10123/2017-18)(hereinafter called "the CIT(A)") for assessment year 2011-12, which appeal in turn has arisen from assessment order dated 18.12.2017 passed by learned Income Tax Officer, Ambedkar Nagar, U.P. (hereinafter called "the AO").

2. The assessee has raised following grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Allahabad Bench, Allahabad:-

"1-Because it is well settled that ex parte assessment should not be treated as punishment.

2. Because the assessment order dated 18-12-2017 as had been made is wholly illegal, arbitrary and erroneous on facts as well as in law, as learned A.O. without any notice under his signature, seal and designation where he is the

assessing officer having discretionary power but he complied only the order of his higher admin officer in suomoto.

3. Because the Appellate Order 13-12-2022 as had been made is wholly illegal, arbitrary and erroneous on facts as well as in law

4. Because due to illness the appellant failed to explain the complete facts, though the return of the appellant was already with the department which was submitted quiet earlier to the issuance of the notice but the learned A.O. had not given any heal on the same.

5. Because the learned A.O had wrong in making the addition of Rs.77,25,140/- for the whole credit in the bank account without considering the debit side of the account.

6. Because the CIT Appeal has not given any opportunity to the appellant.

7. Because the order appealed against is contrary to the facts, laws and principles of natural justice.

8. Because there was no intention to avoid assessment proceedings.

9. Because in any view of the matter the appellant put carves leave to furnish any further grounds of appeal at the time of hearing.”

3. The brief facts of the case are that there was specific CIB information in possession with AO that the assessee has deposited cash totaling Rs. 82,60,000/- in his business account no. 00680200000329 maintained with Bank of Baroda, Baskhari, Ambedkar Nagar , during the year under consideration. The letter was issued by AO to the assessee on 16.04.2015 to furnish details of PAN, acknowledgment of ITR etc. The assessee furnished copy of ITR filed showing gross total income of Rs. 2,41,268/- and total income of Rs. 2,31,270/- . The AO obtained Bank account statement directly from the bank , wherein total deposits in the bank account was Rs. 1,07,39,380/-, while assessee has only disclosed sale receipt of Rs. 30,14,240/-, and hence nature and source of cash deposits by assessee in his business account to the tune of Rs. 77,25,140/- could not be ascertained ,which as per AO has escaped assessment within the meaning of the Section 147/148 of the 1961 Act. The Proceedings u/s 147 were initiated by AO. Notice under section 148 was issued by the AO, but the same remained un-complied with. No return of income was filed pursuant to notice issued u/s 148. Other statutory notices were issued and served by the AO to the assessee. The assessee participated in re-assessment proceedings. The assessee could not explain nature and sources of cash

deposits in the bank. Books of accounts could not be produced by the assessee before the AO, and the assessee pleaded for rejection of books of accounts during hearing before Addl.CIT, Faizabad,U.P.. The directions u/s 144A were issued by the Addl. CIT, Range, Faizabad, U.P to the AO, after giving opportunity of hearing to the assessee, to complete assessment proceedings by invoking provisions u/s 145(3). The AO issued further notice u/s 142(1), dated 05.10.2017, but no explanation was submitted by the assessee, which led to framing of best judgment assessment by AO, wherein an amount of Rs. 77,25,140/- was added by AO to the income of the assessee as undisclosed income, keeping in view directions under section 144A, vide reassessment order dated 18.12.2017 passed by AO u/s 144 .

4. Being aggrieved by reassessment order, the assessee filed first appeal with Id. CIT(A) , who issued five notices of hearing to the assessee, fixing date of hearing on 04.02.2021 , 22.04.2022, 13.10.2022 , 04.11.2022 and 12.12.2022 which remained non-complied with by the assessee. The Id. CIT(A) dismissed the appeal of the assessee for non-prosecution. The Id. CIT(A) while dismissing the appeal of the assessee does not discussed the issue's arising on the merits of the addition, vide appellate order dated 13.12.2022.

5. Still aggrieved, the assessee filed an appeal with ITAT. None appeared for the assessee before the Division Bench when this appeal was called for hearing. The Ld. Sr. DR submitted that an *ex parte* appellate order was passed by Id. CIT(A), as the assessee did not appear before Id. CIT(A) despite five opportunities of hearing granted by Id. CIT(A) to the assessee. The Id. CIT(A) dismissed the appeal of the assessee for non-prosecution, while issues arising in the appeal were not adjudicated by Id. CIT(A) on merits . Thus, Ld. Sr. DR fairly submitted that Id. CIT(A) has not discussed the issue's on merits , and the appeal was dismissed in limine for non prosecution . After hearing Id. Sr. DR and perusing the material on record, we are of the considered view that Id. CIT(A) has dismissed the appeal of the assessee for non-prosecution. However, while dismissing the appeal filed by the assessee,

the ld. CIT(A) has not discussed the issues arising in the appeal on merits, as was required by ld. CIT(A) under section 250(6) of the Act , and hence under facts and circumstances of this case, the appellate order passed by ld. CIT(A) is not sustainable in the eyes of law keeping in view provisions of Section 250(6) as ld. CIT(A) was required to adjudicate all issues arising in the appeal on merits and hence appellate order passed by ld. CIT(A) is required to be set aside, and matter is required to be restored back to the file of ld. CIT(A) for fresh adjudication denovo on merits in accordance with law, wherein ld. CIT(A) shall pass the appellate order also keeping in view provisions of Section 250(6), and after providing opportunity to both the parties in accordance with principles of natural justice and in accordance with law. The assessee is directed to file all details/explanation/evidences before ld. CIT(A) as are required by the ld. CIT(A) to adjudicate the appeal of the assessee denovo and the same shall be adjudicate on merits by ld. CIT(A) in accordance with law. Needless to say that powers of ld. CIT(A) are *co-terminus* with powers of the AO. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

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

Order pronounced in Open Court on 15/09/2023 at Allahabad, U.P..

Sd/-
[ABY T. VERKEY]
JUDICIAL MEMBER

DATED:15/09/2023

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1. Appellant –Mr. Syed Shoeb Ashraf, 516, Village and Post Baskhari, Ambedkar Nagar-224129, U.P.
2. Respondent – ITO, Ambedkar Nagar, U.P.
3. The Sr. DR , ITAT, Allahabad
4. CIT, Allahabad, U.P.
5. The CIT(A), Allahbad, U.P.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER