

**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.268/Asr/2023
Assessment Year: 2017-18**

Sh. Ramesh Chandra Gupta, S/o Sh. Ludher Mani Prop. M/s Ramesh Karyana Store and M/s Ludher Mani Ramesh Chander Doda. J & K. [PAN:-ANXPG5402G] (Appellant)	Vs.	ITO-Ward- Udhampur. (Respondent)
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Appellant by	Sh. Joginder Singh, CA
Respondent by	Smt. Ratinder Kaur, Sr. DR

Date of Hearing	06.11.2023
Date of Pronouncement	09.11.2023

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 250of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. Income

Tax Officer, Ward- Udampur, [in brevity 'the AO'] order passed u/s 144 of the Act.

2. The assessee filed the appeal with a delay of 255 days. The assessee filed an affidavit with petition for condonation of delay and placed that due to the non-cooperation from the consultant the appeal was filed with delay of 255 days. The appointed consultant Mr. Amit Gupta failed to communicate through email. The assessee was unaware about delivery of appeal order. Finally, the cause of action is started after receiving of recovery notice. This is the reason for filing appeal in delay. The ld. DR had not made any objection against the condonation of delay for 255 days. Therefore, the delay for 255 days is condoned.

3. The assessee has taken the following grounds: -

“1. That the Ld. CIT(A) National Faceless Appeal Centre (NFAC) Delhi erred in passing the order Under section 250 of the Income tax Act, 1961 merely on assumptions, presumptions and apprehensions, without affording the adequate opportunity of being heard to the assessee.

2. That the Ld. CIT(A), NFAC, Delhi has erred both in law as well as on facts by dismissing the appeal of the Appellant

without considering the merit of the case and merely followed the order of the Ld. AO.

3. That the order of the Ld. CIT(A), NFAC, Delhi is against the principles of natural justices and same is required to be set aside.

4. The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.”

4. Brief fact of the case is that the assessment was completed u/s 144 with addition amount of Rs. 13,73,579/- U/s 28 of the Act related calculation of net profit U/s 44AD on deposit in bank account and Rs. 3,90,000/- U/s 69A for deposit of old currency note within the period 09/11/2016 to 30/12/2016 which works out total amount to Rs.17,63,579/- which was added back with the total income. The assessee non-filer of income tax return. The non-compliance was made by the assessee during assessment proceeding. As a result, the assessment was framed U/s 144,*ex parte*. Aggrieved assessee filed an appeal before the ld. CIT(A) by challenging the order of the ld. AO. The ld. CIT(A) upheld the order of the ld. AO and passed the order *ex parte*. Aggrieved the assessee filed an appeal before us.

5. The ld. AR argued and placed that the assessee carrying out retail karyana (grocery)business at District Doda, Kashmir. Due to abrogation of article 370 /35A

in the erstwhile state of J & K, the entire internet facility was shut down from 04/08/2019 onwards. This is the reason for non-compliance before the Id. AO.

6. The Id. AR further argued that the assessee is illiterate and does not know to operate email. The assessee appointed CA Mr. Amit Gupta who was negligent to communicate with CIT(A).

6.1 The Id. AR submitted that both the assessment and appeal orders are passed *ex parte*. The Id. AR prayed to remand back the matter to the file of the Id. AO for de novo assessment.

7. The Id. DR vehemently argued and fully relied on the orders of revenue authorities.

8. We heard the rival submission and consider the documents available on the record. The assessee placed the viable reason for non-compliances before the authorities.

8.1 In our considered view the reasonable opportunity was denied for the assessee for submission of his evidence. There is plausible cause for no appearance before the revenue authorities. 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 Id. AO for consideration thereof afresh. We are not

expressing any views on the merits of the case so as to limit the assessment proceeding before the Id. AO. Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

9. In the result, the appeal of the assessee bearing **ITA No. 268/Asr/2023** is allowed for statistical purposes.

Order pronounced in the open court on 09.11.2023

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