

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.893/Kol/2023
Assessment Year: 2005-06**

Saluja Automobiles Ground Floor, G. T. Road, Laxmipur, Burdwan-713101 (WB) (PAN: AAWFS6282Q)	Vs.	ACIT, Circle-1, Burdwan.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri K. K. Khemka, Advocate
Respondent by : Shri Pravash Roy, Addl. CIT

Date of Hearing : 04.01.2024
Date of Pronouncement : 09.01.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1054589901(1) dated 25.07.2023 passed against the assessment order by ACIT, Circle-2, Burdwan u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 31.12.2007 for AY 2005-06.

2. Grounds taken by the assessee are as under:

"1. That the Ld. CIT(A), NFAC's order dated 25.07.2023 is bad in law and facts.

2. That the Ld. CIT(A), NFAC, had erred in law and on facts in re-deciding and dismissing the appeal against order u/s. 143(3) dated 16.01.2008 when the issues involved were already disposed off in appeal no. 36/CIT(A)/ASL/CIR 2/BWN/2009-10 dated 16.12.2013 and no appeal to the Hon'ble Tribunal was filed by the then AO.

3. *That the Ld. CIT(A), NFAC has erred in re-deciding the grounds of appeal against the order u/s. 143(3) of the Act.”*

3. The moot point before us in the present appeal relates to sustainability of the order passed by Ld. CIT(A) second time after having already disposed off the appeal by the assessee by passing the order dated 16.12.2013 along with order dated 30.05.2008.

4. Brief facts of the case are that assessee is a partnership firm and filed its return of income on 31.10.2005 reporting a total income of Rs.5,30,200/-. Assessment was completed u/s. 143(3) of the Act wherein following additions were made:

(i)	Addition on account of Excess Commission	:	Rs.16,000/-
(ii)	Addition on account of TDS arrear	:	Rs.1,04,635/-
(iii)	Addition on account of turnover tax outstanding:		Rs.18,945/-
(iv)	Addition on account of Sale tax outstanding	:	Rs.9,495/-
(v)	Addition to Gross Profit by a sum of	:	Rs.16,45,612/-

4.1. Against these additions, assessee preferred an appeal before the Ld. CIT(A) which was partly allowed vide order dated 30.05.2008. Against this order, assessee preferred an appeal before the Tribunal on the issue of commission income of the assessee from BSNL. The Tribunal had set aside the matter back to the file of Ld. CIT(A) on this single issue for deciding it de novo after providing opportunity to the assessee. In the set aside proceeding on the single issue, ld. CIT(A) passed an order dated 16.12.2013 wherein the claim of the assessee was allowed.

4.2. Subsequently, another order by Ld. CIT(A) has been passed u/s. 250 of the Act which is dated 25.07.2023. This order mentions that the appeal is instituted on 14.10.2009 from the order of ACIT, Circle-2, Burdwan dated 31.12.2007. Ld. CIT(A) in this order has stated that several opportunities of being heard were given to the assessee. Since

there were non-compliance by the assessee, the appeal was dismissed on the ground of failure on the part of the assessee to file any submissions in support of the appeal. Aggrieved by this order of Ld. CIT(A), assessee is in appeal before the Tribunal.

4.3. Ld. Counsel for the assessee has evidently demonstrated that this latest order by Ld. CIT(A) dated 25.07.2023 is bad in law, void ab initio, non est and is liable to be quashed since appeal of the assessee before the Ld. CIT(A) had already been decided and disposed off in two parts, first by the order dated 30.05.2008 and another on single issue which was remanded back by the Hon'ble Tribunal vide order dated 16.12.2013. In both these orders, the issues raised by the assessee against the assessment done had come to finality and there was nothing pending in this respect. According to the Ld. Counsel for the assessee, there was no pending appeal from the assessee before the Ld. CIT(A) to pass yet another order dated 25.07.2023 against the same assessment order which had attained finality. This impugned CIT(A) order dated 25.07.2023 is passed by National Faceless Appeal Centre (NFAC), Delhi. On confrontation of these facts to the Ld. Sr. DR, he fairly accepted the facts on record and could not rebut the same.

5. We have heard and considered the rival contentions and perused the material available on record. We have also gone through the orders passed by the Ld. CIT(A), originally passed on 30.05.2008 and in the remand proceeding by the Tribunal on 16.12.2013. We take note of the fact that with these first appellate orders, the assessment made by the Ld. AO u/s. 143(3) vide order dated 31.12.2007 had attained finality and there was nothing pending before the Ld. CIT(A) by way of any appeal by the assessee. We fail to understand the basis on which Ld. CIT(A), NFAC, Delhi has passed the impugned order u/s. 250 dated 25.07.2023 when appeal of the assessee had already been

disposed off as aforesaid. Considering the facts on record, we quash the impugned first appellate order passed by Ld. CIT(A), NFAC, Delhi dated 25.07.2023. Since it is void ab initio as the impugned assessment order had attained finality in terms of the earlier two orders already passed by Ld. CIT(A) dated 30.05.2008 and 16.12.2013. Accordingly, grounds taken by the assessee are allowed.

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

Order is pronounced in the open court on 9th January, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 9th January, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
 - 6.
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata