

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 975/Kol/2023
Assessment Year : 2010-11

Mofizul Hossain	vs	ITO, Ward-42(4), Murshidabad
PAN: ACJPH 9060 J		
Appellant		Respondent

Date of Hearing	03.01.2024
Date of Pronouncement	30.01.2024
For the Assessee	None
For the Revenue	Shri A.K. Bandopadhyay Addl. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2010-11 is directed against the order dated 15.03.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. At the outset, we find that there is a delay of 123 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time. Hence delay is condoned and appeal is admitted.

3. None appeared on behalf of the assessee.

4. The ground taken by the assessee challenging the impugned order that the order of the Id. CIT(A) is an *ex-parte* order and nothing has been dealt on merits except reiterating assessment order on the disallowances/additions made by the Id. AO. The

assessee could not get any opportunity to file its submissions and other relevant details. As the assessee being rural folk and may not be conversant with electronic mode of intimation of notices through e-mail. Due to this reason, assessee may failed to decipher the said intimation and case was decided *ex-parte* against the assessee by the ld. CIT(A). Thus, the assessee referring to grounds of the appeal, we note that grounds raised in the instant appeal may be restored to the ld. CIT(A) for adjudicating afresh after providing reasonable opportunity of being heard.

5. Per contra, ld. DR opposed the request made by the assessee. Since the ld. CIT(A) issued several consecutive notices to the assessee but assessee did not avail such opportunity given by the ld. CIT(A).

6. We have heard the contentions of ld. DR and perused the records placed before us. Through grounds, the assessee has stated that ld. CIT(A) failed to appreciate the materials on record and passed the order *ex-parte*. On perusal of the impugned order, we noticed that the instant ground raised by the assessee has merit as in the impugned order, ld. CIT(A) merely reproduce grounds of appeal raised by the assessee and the decision part, finding has been given only reiterating the assessment order passed by the ld. AO, as the assessee in the instant case could not able to file necessary details as well as submissions at the time of hearing before the ld. CIT(A). Under these given facts and circumstances, we restore the matter in the instant appeal to the file of ld. CIT(A) for adjudicating afresh to pass a speaking order after considering the

submission made by the assessee for which reasonable opportunity of being heard should be provided. The assessee also directed to remain vigilant and file necessary documents in support of its grounds of appeal and should not take any further adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance before the ld. CIT(A), then the ld. CIT(A) can proceed to pass the order in accordance with law.

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

Order pronounced in the open court on 30.01.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 30.01.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mofizul Hossain, Panchthupi, Kandi, Murshidabad-742161.
2. Respondent – ITO, Ward-42(4), Murshidabad.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata