

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA  
BEFORE SHRI SAJNAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1333/Kol/2023  
Assessment Year: 2017-18**

|   |     |                           |
|---|-----|---------------------------|
| Royal Calcutta Turf Club<br>C/o M/s. Salarpuria Jajodia &<br>Co., 7, C. R. Avenue, 3 <sup>rd</sup> Floor,<br>Kolkata, West Bengal-700072.<br>(PAN:AAAAR0769A) | Vs. | ACIT, Circle-22, Kolkata. |
| <b>(Appellant)</b>  |     | <b>(Respondent)</b>       |

**Present for:**

Appellant by : Shri S. Jhajharia & Shri Sujay Sen, ARs  
Respondent by : Shri Abhijit Kundu, CIT

Date of Hearing : 05.02.2024  
Date of Pronouncement : 07.02.2024

**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/250/2023-24/1058186608(1) dated 23.11.2023 passed against the assessment order by Asstt. Commissioner of Income Tax, Circle-22, Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated.28.12.2019 for AY 2017-18.

2. In ground nos. 1 and 2, assessee has contested that Ld. CIT(A) is unjustified in passing the ex parte order without adjudicating the issues/grounds on merit. Assessee had filed adjournment application on the two dates of hearing which fell during the COVID Pandemic and for the other two, Ld. Counsel for the assessee was occupied in preparing and filing of tax audit reports.

4. Brief facts of the case are that assessee is an Association of Person (AOP) and it runs a club for its members. Assessee filed its return of income on 28.10.2017 reporting nil income. During the course of assessment, various details were called for which were complied with. Ld. AO after considering the details furnished passed the assessment order u/s. 143(3), determining total income as tabulated below:

| Sr. No. | Particulars   | Amount (in Rs.) |
|---------|---|-----------------|
| 1.      | Short Term Capital Gain   | 459,183/-       |
| 2.      | Long Term Capital Gain  | 992,875/-       |
| 3.      | Income from Other Sources   | 5,19,69,617/-   |
| 4.      | Add. – House Property deduction @ 30% (treating as business income) | 19,39,79,159/-  |
| 5.      | Add. Expenditure towards Horse Welfare                              | 2,00,00,000/-   |
| 6.      | Add. U/s. 43B (prior period expense)                                | 14,90,447/-     |
| 7.      | Add – Entrance Fees as revenue receipt                              | 26,50,000/-     |
| 8.      | Add – 14A r.w. Rule 8D(2)   | 7,06,352/-      |
| 9.      | Add – Non-deduction of TDS u/s. 40(a)(ia)                           | 42,35,093/-     |
|         | Assessed Income   | 27,64,82,729/-  |

4.1. Aggrieved, assessee went in appeal before the Ld. CIT(A), who noted that no one attended or furnished submissions in the course of appellate proceeding. According to him, assessee did not file any written submission and evidence and thus it remained to be unexplained as to how the order of ld. AO is unjustified. Ld. CIT(A) thereafter, took up the matter, he reproduced the order of Ld. AO and briefly stated that he is in agreement with the reasons given by the Ld. AO. He then, confirmed the addition made by the Ld. AO and dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee pointed out that out of the four notices issued by Ld. CIT(A) for fixing the hearing, two notices fell during the period of Covid Pandemic because of which there was no response from the assessee. The other two notices for which the date of hearing was fixed in the month of August and November, 2023,

adjournment was sought for filing the submissions since ld. Counsel for the assessee was occupied in the professional work of preparing and furnishing tax audit reports. Ld. Counsel also submitted that in the course of assessment proceedings, assessee had duly complied with statutory notices and had furnished all the required details electronically on the portal of the Department. He thus, pleaded that the matter may be remitted back to the file of Ld. CIT(A), affording an opportunity to the assessee to make its submission and furnish all the required explanations in support of the claim made by it in its return. Ld. Counsel assured that necessary compliances will be made as and when opportunity is given to the assessee in the course of hearing before the Ld. CIT(A).

6. Per contra, Ld. CIT DR placed reliance on the order of the authorities below.

7. We have heard the rival contentions and perused the material available on record. We find that assessee has made its submissions and compliances in the course of assessment proceeding completed u/s. 143(3) of the Act. As stated by the Ld. Counsel, there was compelling and bona fide reasons because of which compliance could not be made at the first appellate stage before the ld. CIT(A). The said order has been passed by observing that no submission is uploaded by the assessee despite opportunities given to it and very briefly held by Ld. CIT(A) that he is in agreement with the reasons given by the Ld. AO.

8. It is noted that the ld. CIT(A) has passed an *ex parte* order. The impugned order of Ld. CIT(A) is erroneous for violation of sub-sections (1), (2), (2a) and 2(b) of section 250 of the Act. It should be kept in mind that if an assessee is aggrieved by the order of the AO, then he (assessee) has the statutory right to file an appeal before the Ld. CIT(A) and has a right to be heard as per sub-section (2) of section 250 of the

Act. This valuable/statutory right of the assessee cannot be lightly brushed aside . Having said so, we also expect the assessee to be diligent while pursuing the appeal. In the light of above discussion, the impugned order of the Ld. CIT(A) is set aside and the appeal is restored back to him with the direction to pass a speaking order meritoriously by going through the statements of facts as well as oral/written submissions/documents, if any, filed by the assessee. The assessee is directed to be diligent and either appear or/and file necessary papers before him, if advised to do so and the Ld. CIT(A) to pass a speaking order on each grounds raised by the assessee as stipulated u/s 250(6) of the Act and in accordance with the law.

9. Accordingly, we find it proper to remit the matter back to the file of Ld. CIT(A) for passing a speaking order meritoriously considering the submissions and explanations furnished by the assessee.

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

Order is pronounced in the open court on 07<sup>th</sup> February, 2024

Sd/-

(Sanjay Garg)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

***Dated: 07<sup>th</sup> February, 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
- //True Copy//

By order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata