

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3343/M/2023
Assessment Year: 2018-19**

M/s. N.P. Textile Agency, D/7-8, Indraprasth Society, Sarvodaya Nagar, Mulund (West), Mumbai – 400 080 PAN: AAIFN5003C	Vs.	National Assessment Centre, New Delhi/ Dy. Commissioner of Income Tax, Circle 41(2)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajesh Athavale, A.R.
Revenue by : Shri Ashok Kumar Abastha, D.R.

Date of Hearing : 05 . 02 . 2024
Date of Pronouncement : 27 . 02 . 2024

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. N.P. Textile Agency (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 27.07.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2018-19 on the grounds inter-alia that :-

"1. The learned CIT(A) erred in passing ex-parte order, without going into the merits of the case.

2. The learned CIT(A) erred in confirming the action of the Assessing Officer (AO) in making addition of INR 49,157 on account of undervaluation of closing stock.

3. *The learned CIT(A) erred in confirming the disallowance of INR 20,34,338 made by the AO on account of salary expenses.*

4. *The learned CIT(A) erred in not directing the AO to allow interest on capital and salary paid to partners aggregating to INR 44,40,777 as the same was paid as per the partnership deed and the limits specified in Section 40(b) of the Income tax Act. He erred in not appreciating that the respective partners had already offered for tax such interest on capital and salary in their personal income tax return, which resulting into double addition.*

5. *The learned CIT(A) erred in confirming the adhoc 50% disallowance amounting to INR 6,29,655 made by the learned AO out of total expenses of INR 12,59,311 incurred by the appellant on sample expenses, travelling expenses, business promotion and printing and stationery.*

6. *The learned CIT(A) erred in confirming the initiation of penalty proceedings under Sections 270A and 272A(1)(d) of the Income tax Act.*

7. *Each one of the above grounds of appeal is without prejudice to the above.*

8. *The appellant reserves the right to add, alter or amend to the above grounds of appeal.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of fabrics as a commission agent and also trades in fabrics. Return of income filed by the assessee for the year under consideration was subjected to scrutiny. The Assessing Officer(AO) after declining the contentions raised by the assessee made an addition of Rs.49,157/- on account of undervaluation of closing stocks. The AO also made disallowance of Rs.20,34,338/- on account of salary expenses. The AO further disallowed interest on capital and salary paid to the partners amounting to Rs.44,40,777/-. The AO also made adhoc disallowance to the tune of Rs.6,29,655/- i.e. @ 50% out of total expenses of Rs.12,59,311/-

and thereby framed the assessment under section 143(3) read with section 144B of the Income Tax Act, 1961 (for short 'the Act').

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal ex-parte. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld. Authorised Representatives of the parties to the appeal that the present appeal has been dismissed by the Ld. CIT(A) ex-parte for want of prosecution by the assessee, that too without entering into the merits of the case.

6. We have perused the impugned order passed by the Ld. CIT(A) particularly para 5 which shows that four notices were stated to have been issued to the assessee but on failure of the assessee to file the submissions case has been dismissed for want of prosecution. We are of the considered view that sometimes due to introduction of the faceless proceedings before the first appellate authority notices issued do not reach the assessee as it is claimed by the Ld. A.R. for the assessee that no such notice has ever been received. Even otherwise to impart the justice and to decide the

issue once for all opportunity of being heard is required to be given to the assessee. For argument sake even if it is assumed that notices were served upon the assessee but he has not preferred to appear before the first appellate authority, in that situation the Ld. CIT(A) was required to dispose of the appeal on merits, but not for want of prosecution.

7. In view of the matter the impugned order passed by the Ld. CIT(A) is hereby set aside and remitted back to him [CIT(A)] for deciding afresh after providing adequate opportunity of being heard to the assessee.

8. Resultantly, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 27.02.2024.

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 27.02.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.