

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.330/LKW/2023

A.Ys. 2018-19

Anurag Brick Field, Kanchan Mathi, Bhogipur, Kanpur Dehat PAN ABGFA 4768A	Vs.	Income Tax Officer, Ward 1(1)(1), Kanpur U.P.
(Appellant)		(Respondent)

Appellant by	None present for the assessee
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	18/01/2024
Date of pronouncement	29/02/2024

ORDER

This appeal has been preferred by the assessee against the order dated 11.08.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year (AY) 2018-19.

2. The brief facts of the case are that the assessee is a partnership firm. The Return of Income was filed declaring income at Rs.90,089/- u/s.44AD of the Income Tax Act, 1961 (hereinafter called the 'Act') by applying Net Profit Rate of 8% on gross receipts of Rs.11,25,209/-. The Return of Income was processed u/s.143(1)(a) of the Act and the total

income was determined at Rs.4,50,222/-. Thereafter, the assessee moved an application u/s. 154 of the Act with the CPC which came to be rejected by holding that the assessee had failed to respond to the communication to the proposed adjustment u/s. 143(1)(a) of the Act and, therefore, the transaction was closed and no further rectification was possible.

3. Aggrieved with the rejection of application u/s.154 of the Act, the assessee filed an appeal before the NFAC challenging the said rejection. However, the assessee's appeal came to be dismissed by the NFAC on the ground that there was no compliance on the part of the assessee on as many as eleven opportunities provided by the NFAC.

4. Now, the assessee has approached this Tribunal challenging the dismissal of its appeal by the NFAC by raising the following grounds of appeal:

"(1) That Ld. Respondent erred in passing ex parte order without affording proper and valid opportunity of being heard.

(2) That in case of ex parte order the case is to be decided on merit of the facts and record available on record. In the impugned case, it is accepted fact that deemed profit has been adopted u/s 44 A.D. of the act and no salary paid to the partner has been deducted from deemed net profit, so addition of the same is illegal and is liable to be quashed.

(3) That facts which were on record and has to be considered by lower authority before passing exparte order.

(4) That Order passed is illegal against law and facts and liable to be quashed."

5. None was present on behalf of the assessee when the appeal was called out nor was any adjournment application received in this regard. However, looking into the facts of the case, I deem it appropriate to proceed with the hearing of the appeal ex-parte qua the assessee.

6. I have perused the record. It is evident that there was complete non compliance on the part of the assessee during the course of first appellate proceedings. However, looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the NFAC with the direction to provide one more opportunity to the assessee to present his case and I also caution the assessee to fully comply with the directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete liberty to pass the order in accordance with

law, based on material available on record even if it is ex-parte qua the assessee.

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

(Order pronounced in the open court on 29/02/2024)

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Aks –
Dtd. 29/02/2024

Copy of order forwarded to:

(1) *The appellant*
(3) *Commissioner*
(5) *Guard File*

(2) *The respondent*
(4) *Departmental Representative*

Assistant Registrar