

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1091/Bang/2023
Assessment Year : 2017-18

M/s. Magar and Magar (India), Yellapur Oni, Pune – Bangalore Road, Near Bankapur Chowk, Hubli – 580 025. PAN: AAHFM6171F	Vs.	The Income Tax Officer, Ward – 2(1), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Nadeem Lasani, Advocate
Revenue by	:	Dr. Nischal, Addl. CIT (DR)

Date of Hearing	:	01-02-2024
Date of Pronouncement	:	22-03-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by the NFAC, Delhi dated 26.10.2023 for A.Y. 2017-18 on following grounds of appeal:

“This Appeal, by the Assessee, is directed against the Order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeals Centre (NFAC), Delhi dated 26th October 2023, pertaining to the Assessment

*Year 2017-2018. The Appellant has raised the followed grounds of appeal :
On facts and in law,*

1] Under the facts and circumstances of the case The Learned CIT(A) has erred in passing the ex parte Order under section 250 of the Income Tax Act, 1961.

2] Under the facts and circumstances of the case The Learned CIT(A) has erred in law as well as on fact in confirming the Order of Assessment passed by the Ld. Assessing Officer under section 144 of the Income Tax Act, 1961.

3] The Appellant craves the permission to add, alter, amend or delete any of the above Grounds of Appeal before or at the time of hearing.”

2. At the outset, the Ld.AR submitted that the order passed by the Ld.CIT(A) / NFAC is an ex-parte order. He submitted that various notices were issued to the assessee on ITBA portal. However, due to lack of technological knowledge, the assessee could not access these notices and could not intimate the same to the representatives. Due to this, assessee could not furnish relevant information / details to support the claim before the NFAC.

The Ld.AR prayed for the appeal to be remanded in order to consider the claim on merits in the light of evidences filed by the assessee.

3. The Ld.DR objected to the prayer raised by the Ld.AR. He submitted that there is no evidences to substantiate the reason provided by the assessee for not appearing before the Ld.CIT(A). He thus prayed for the order of the Ld.CIT(A) to be confirmed.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. We note that admittedly assessee did not appear before the Ld.CIT(A), though various opportunities were granted. However it cannot be overlooked that the period when the authority took up the appeal was covid period and considering the chaotic environment that existed during the relevant period, the possibility of oversight cannot be ignored.

5. An assessee has “the right to be heard at the hearing of the appeal” and such a right cannot be put against the assessee. Before an appeal can be disposed of, a fair and reasonable opportunity of hearing is to be essentially extended to the assessee. The non-exercise of this right by the assessee cannot be a reason enough for the CIT(A)’s not dealing with the points so raised before him on merits.

5.1. The exercise of the “right to be heard at the hearing of the appeal” by “the appellant, either in person or by an authorized representative condition”, under section 250(2)(a), is not a condition precedent for the disposal of appeal on merits in accordance with the scheme of Section 250(6). Therefore, irrespective of the non-appearance of the assessee before the CIT(A), the CIT(A) ought to have dealt with the issues so raised by the assessee on merits and to pass order by way of speaking order and in accordance with the law.

6. Accordingly, in the interest of justice, we deem it appropriate to remand the appeal back to the Ld.CIT(A) for necessary consideration. Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee is also directed to furnish all relevant details in support of its claim. The Ld.CIT(A) is directed to pass a detailed order on merits after considering the evidences furnished by assessee.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 22nd March, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 22nd March, 2024.
/MS /

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore