

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 637/DEL/2023
Assessment Year: 2010-11**

Amit Trivedi, II-E-32/33, JNV Colony, Bikaner, Rajasthan-334003. PAN- ACGPT9628P	<u>Vs</u>	Income Tax Officer, Ward-1, Gurgaon.s
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Shri Kanv Bali, Sr. DR	
Date of hearing	08.04.2024	
Date of pronouncement	08.04.2024	

ORDER

PER SAKTIJIT DEY, V.P.:

This is an appeal by the assessee against order dated 02.02.2023, passed by the National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2010-11.

2. When the matter was called out, none appeared on behalf of the assessee to represent the case. Even, there is no application seeking adjournment. Considering the nature of dispute in the appeal, we proceed to dispose of the appeal, ex parte,

qua the assessee, after hearing learned Departmental Representative (DR) and based on facts and materials available on record.

3. Grounds raised by the assessee are as under:

“1. The CIT(A) erred in dismissing the appeal of the assessee on the ground of notional delay, when actually there was no service of demand notice and there was no delay in filing appeal.

2. The CIT(A) erred in dismissing the appeal of the assessee on the ground that no FIR was lodged for the bogus ITR filed by someone.”

4. Briefly, the facts are, for the assessment year under dispute, the assessee purportedly filed his return of income declaring income of Rs. 15,00,400/-. The return of income, so filed, was processed by the Centralized Processing Centre, raising demand of Rs. 4,91,290/-. Subsequently, assessee filed an appeal against the intimation issued u/s 143(1) of the Act. As could be seen, while scrutinizing the appeal, filed by the assessee, the First Appellate Authority observed that the assessee had filed the appeal with inordinate delay of more than eight years and six months. Accordingly, he dismissed the appeal in limine without condoning the delay.

5. On perusal of record, it is observed that the specific case of the assessee, before the First Appellate Authority, was, during the period from 29.09.2006 to 2.5.2010, the assessee was working in USA and had no source of income in India.

Therefore, he did not file any return of income in India for the assessment year under dispute. It is the allegation of the assessee that some third party had fraudulently filed return of income in the name of the assessee by using assessee's PAN. It is the say of the assessee that when refund of Rs. 72,190/-, arising in A.Y. 2012-13, was adjusted against demand for the impugned assessment year, only then he came to know about intimation issued u/s 143(1) of the Act for impugned assessment year. He immediately took steps for obtaining the intimation u/s 143(1) and thereafter filed an application u/s 154 before the Assessing Officer. However, since the said application remained pending, the assessee filed appeal before First Appellate Authority.

6. It is further evident from the materials on record that the assessee had filed a grievance application before the Assessing Officer, narrating the aforesaid facts. From the letter dated 23.10.2020, issued by the Assessing Officer, it is noticed that though assessee's assessment jurisdiction and PAN was transferred to Circle 2(1), Gurgaon from Ward 30(3), Delhi, on 1.10.2011, however, manual return of income was filed on 16.03.2011 for the impugned assessment year, before the ITO, Ward 30(3), Delhi. From the aforesaid facts, it appears that there could be some truth in the statement of the assessee that some third party had fraudulently filed return of income for the impugned assessment year, which resulted in creation of demand against the assessee. However, at this stage, we are not in a position to record any

conclusive factual finding on assessee's claim of fraudulent filing of return of income, as this fact has to be established through proper inquiry and investigation, based on cogent material to be brought on record by the assessee. To provide an opportunity to the assessee to establish on record that the return of income subjected to proceedings u/s 143(1) of the Act by the Centralized Processing Centre was not filed by him, but somebody else, we are inclined to set aside the impugned order of First Appellate Authority and restore the issue to the file of the Assessing Officer for de novo adjudication, after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in open court on 08.04.2024.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

