

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: G : DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2992/DEL/2023  
Assessment Year: 2011-12

Susheel Sharma,  
Aarath Bazar,  
Gangoh,  
Saharanpur,  
Uttar Pradesh – 247 341.

Vs ITO,  
Ward 3(4),  
Saharanpur.

PAN: AWWPS2125A

(Appellant)

(Respondent)

Assessee by	: Shri Nitin Gulati, Advocate
Revenue by	: None- Adj. Application
Date of Hearing	: 12.02.2024
Date of Pronouncement	: 16.04.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal preferred by the assessee is against the order dated 08.06.2023 of the Commissioner of Income-tax (Appeal), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A), Muzaffarnagar/10280/2017-18 arising out of an appeal before it against the order dated 30.08.2017 passed u/s 143(3) r.w.s. 263 of the

Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ITO, Ward 3(4), Saharanpur (hereinafter referred as the Ld. AO).

2. The case of the assessee was selected for scrutiny and the assessment was completed u/s 143(3) vide order dated 20.02.2014 after making certain additions which were examined by ld. PCIT, Muzaffarnagar by invoking the powers u/s 263 of the Act and the assessment order was found to be erroneous so far as prejudicial to the interests of the Revenue. Therefore, with specific directions the AO was directed to make a fresh assessment and, thereafter by order dated 30.08.2016, the assessment order u/s 143(3) r.w.s. 263 of the Act was passed making additions as per the directions of ld.PCIT, Muzaffarnagar which was challenged by the assessee before the ld.CIT(A) and by the impugned order dated 08.06.2023, the ld. first appellate authority had decided the appeal dismissing the grounds for which the assessee is in appeal before this Tribunal raising the grounds on merits challenging the addition and its sustenance. Apart from that, an additional ground was made that the order passed by the AO u/s 143(3) r.w.s. 263 dated 30.08.2017 has been passed beyond the time provided to pass the order.

3. After hearing the rival contentions, it comes up that the appeal filed before this Tribunal is delayed by 77 days for which the assessee has filed an affidavit that the clerk of the assessee had failed to follow the direction to file the appeal before the CIT(A) and, therefore, there was the delay and the delay is

not for any substantial period and the reason appears to be genuine. We allow the condonation of delay.

4. Further, in regard to the additional ground before us, being pure question of law is admitted and the relevant provision of the Act, applicable is section 153(3) of the Act and we consider it appropriate to reproduce the same:-

*“Section 153 (3) Notwithstanding anything contained in sub-sections (1) and (2), an order of **fresh assessment** in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of **nine months** from the **end of the financial year in which the order** under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, **the order under section 263** or section 264 is passed by the Principal Commissioner or Commissioner :”*

5. In the case in hand, admittedly, the following sequence of event occurred:-

- (i) Original assessment order was passed on 20.02.2014;
- (ii) The order u/s 263 of PCIT, Muzaffarnagar was passed on 16.02.2016 directing ‘fresh assessment’; and
- (iii) The period of nine months from the end of the financial year AY 2015-16, on 31/3/2016 would be 1/11/2016.
- (iv) The order u/s 143(3) r.w.s. 263 of the Act giving effect to the order dated 16.02.2016 u/s 263 of the Act was however passed by the AO on 30.08.2017.

6. In the light of the sub-section (3) of section 153 of the Act, the effect giving order u/s 143 r.w.s. 263 should have been passed as per the provisions of section within 9 months upto 1/11/2016. However, apparently, the same is beyond the said period and, thus, the effect giving order is barred by limitation. We accordingly allow the additional ground.

7. The appeal is allowed and the impugned assessment order is quashed.

Order pronounced in the open court on 16.04.2024.

Sd/-

(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 16<sup>th</sup> April, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi