

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3219/Del/2023  
Assessment Year 2017-18

<b>Ruby Garg,</b> Prop. M/s. R.K. Industries, W/o Sh. Sachin Kumar Garg, Industrial Estate Kairana Road Shamli, Uttar Pradesh	Vs.	<b>Income Tax Officer,</b> <b>Ward -3(1)(5)</b> Shamli, Uttar Pradesh
TAN/PAN: AYMPG9826A		
(Appellant)		(Respondent)

Applicant by:	Shri Ankit Gupta, Advocate		
Respondent by:	Shri Vivek Vardhan, Sr.DR		
Date of hearing:	06	05	2024
Date of pronouncement:	06	05	2024

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi ('CIT(A)' in short) dated 13.09.2023 arising from the assessment order dated 10.12.2019 passed under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

2. The assessee has raised several grounds to challenge the order of the CIT(A)-NFAC. One of the grounds pertained to violation of principles of natural justice by denying sufficient opportunity and passing *ex-parte* order by the CIT(A).

3. When the matter was called for hearing, the Id. counsel submitted that from the text and tenure of the appellate order, it would be self evident that the reasonable opportunity of hearing was not given to the

assessee at all and the first appellate proceedings were completed in a hurry, solely relying upon the assessment order. The Id. counsel thus submitted that such lack of opportunity to the assessee has resulted in miscarriage of justice. The Id. counsel thus urged for suitable relief in the matter.

4. The Id. DR for the Revenue referred to and relied upon the first appellate order.

5. We have carefully considered the rival submissions and perused the first appellate order as well as the assessment order.

6. From the first paragraph of the order passed under Section 250 of the Act, it appears that two notices were issued to discuss the grievances raised by the assessee. The first notice was issued on 19.07.2023 and another notice was issued within one month on 17.08.2023. Non-compliance of these two notices has resulted in *ex-parte* order by the CIT(A).

6.1 In this regard, we take note of the plea of the assessee that the notice was issued one after another on two occasions as noted above and the assessee was not aware of such issuance of notices. It is not a case that the assessee is a habitual defaulter. The assessee has duly attended that assessment proceedings and the assessment was framed under Section 143(3) of the Act in view of compliances made. Thus, no presumption can be drawn that the non-compliance has occurred deliberately.

6.2 The assessee also contends that high pitched assessment has been framed and it was solely in the interest of the assessee to promptly attend the proceedings as early as possible. Thus non-attendance occurred before the CIT(A) is rather detrimental to the interest of the assessee. Thus, no culpability can be envisaged in the factual matrix.

7. On appraisal, we find force in the assertions made on behalf of the

assessee. As noted, the notices have been issued on two occasions within a span of one month. There can be variety of reasons for non-compliance including compliances through digital eco-system in vogue and faceless appeal proceedings recently introduced and replaced by earlier manual dispensation. No a deliberate motive cannot *per se* be imputed. The plea of the assessee thus deserves to be viewed in a benign manner.

8. Hence, in order to prevent miscarriage of justice and to set right procedural impropriety, we consider it expedient to set aside the *ex-parte* order passed by the CIT(A) and restore the appeal before the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity to the assessee. The assessee is also cautioned to attend the first appellate proceedings diligently without any demur.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order was pronounced in the open Court on 6<sup>th</sup> May, 2024.**

Sd/-

**[SUDHIR KUMAR]  
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: May, 2024  
*Prabhat*