

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SH. AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 3564 & 3565/Del/2023
(Assessment Year : 2017-18)**

Braham Singh
House No.218, Near
Panchayat Ghar, Mujeri,
Vijay Nagar, Sagarpur,
B.O. Faridabad,
Haryana-121004

Vs. ITO
Ward – 1(1)
Faridabad

PAN: DNMP5 9977 Q

(Appellant)

..

(Respondent)

Appellant by : Shri Shyam Sunder Mangla, C.A.
Respondent by : Shri Kanv Bali, Sr. D.R.

Date of Hearing 14.05.2024
Date of Pronouncement 20.05.2024

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

Both the appeals filed by the assessee is directed against the order dated 21.07.2023 passed by the Commissioner of Income Tax (Appeals)–NFAC, Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the assessment order dated 02.09.2022 passed by the Income Tax Officer NWR-W-(51)(1) (‘the AO’) under Section 271F of the Act for the Assessment Year (A.Y.) 2017-18.

- 2 -

2. Since both the appeals relates to the same assessee. These are heard analogously and are being disposed of by a common order.

3. We have heard the Learned Counsels appearing for the parties, we have also perused the relevant materials available on record. Since the assessee failed to comply with the statutory notices under Section 142(1) of the Act on 10.03.2022 and 12.03.2022 penalty proceedings under Section 274 read with Section 272A(1)(d) of the Act for non compliance to the notice under Section 142(1) of the Act was initiated separately by the Learned AO. Notice under Section 274 read with Section 272A(1)(d) was issued to the assessee on 27.03.2022 followed by a show-cause notice dated 17.08.2022 directing the assessee to respond on or before 23.08.2022. Since, the assessee failed to comply with the said notices, the Learned AO finally levied penalty of Rs.10,000/- holding the assessee in default under Section 272A(1)(3) of the Act, which was further upheld by the First Appellate Authority. However, Learned CIT(A) while upholding the same not granted any opportunity of being heard to the assessee and *ex parte* order passed thereon. Similarly, the assessee didn't file the return of income for A.Y. 2017-18 within the time period prescribed under notice issued under Section 148 of the Act i.e. latest by 27.03.2021. Neither any explanation was offered. Imposition of penalty under Section 271F of the Act to the tune of Rs.5,00,000/- was made by the Learned AO which was further confirmed by the First Appellate Authority by passing an *ex parte* order, without offering opportunity of being heard to the assessee. Under this present facts and circumstances of the matter, Learned Advocate

- 3 -

appearing for the assessee submitted before us that the assessee since has not been given an opportunity of being heard by the Learned CIT(A), further opportunity be given to the assessee to explain the difficulty on the part of the assessee in this regard.

4. Having regard to the facts and circumstances of the matter, we in order to prevent the miscarriage of justice find it fit and proper to provide a further opportunity of being heard to the assessee. Hence, the issue is restored back to the file of the Learned CIT(A) for adjudication to the same afresh upon granting opportunity of being heard to the assessee and upon considering any evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that in the event the assessee fails to comply with the notice to be served by the Learned CIT(A) in course of appellate proceedings as directed hereinabove, the said authority would be at liberty to pass an orders strictly in accordance with law.

5. In the result, both the appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on 20/05/2024

Sd/-
(AVDRESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 20/05/2024

- 4 -

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI