

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

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3380/Del/2023
Assessment Year: 2018-19

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| Rakesh Kumar Goel 173, New Rajdhani Enclave, Anand Vihar, S.O. Laxmi Nagar, East Delhi-110092 PAN No.AAEPG7376H | Vs. | CIT NFAC |
| (APPELLANT) | | (RESPONDENT) |

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|---------------|---------------------------|
| Appellant by | None |
| Respondent by | Sh. Vivek Vardhan, Sr. DR |

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|------------------------|------------|
| Date of hearing: | 08/05/2024 |
| Date of Pronouncement: | 21/05/2024 |

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi order dated 14.07.2023 of the Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT(A)) in ITBA/NFAC/S/250/2023-24/1054359499(1) pertaining to A.Y. 2018-19 and arises out of the assessment order under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "Act").

2. At the outset, it is noted that the appeal filed by the assessee is time barred by limitation by 76 days. The impugned order passed by the CIT(A) dated 14.07.2023 was served on the assessee on 14.07.2023. The appeal has to be filed on or before 13.09.2023 but it was actually filed on 27.11.2023 with a delay of 76 days. The assessee has filed an affidavit alongwith condonation of delay application stated the reason that due to health issue he was not filed the appeal in time. Delay was caused beyond control of the assessee, we find the cause as reasonable and hence condone the delay and admit the appeal.

3. Brief facts of the case is that the assessee has filed the Income Tax return of A.Y. 2018-19 on 22.02.2019 declaring a total income of Rs.6,88,00,250/-. The case was selected for scrutiny assessment under CASS and assessee was directed to furnish the details of the Income as unsecured loans, export import etc. A questionnaire was also served to the assessee to furnish the details. Thereafter assessment was framed under Section 143 (3) r.w.s. 144B of the Act vide order dated 07.02.2020 and the total income was determined at Rs.9,38,86,870/-.

4. Aggrieved by the order passed by the AO the assessee carried the matter before the Ld. CIT(A) who vide order dated 14.07.2023 dismissed the appeal on account of non prosecution.

5. Aggrieved by the order passed by the CIT(A) the assessee is in appeal before us by raising the following grounds :-

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts

2. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in passing the order without providing reasonable opportunity of being heard to the assessee in clear violation of principle of natural justice

3. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in conforming the additions of Rs.2,22,40,218/- made by AO on account of diversion of funds for non-business purposes

4. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in conforming the additions of Rs. 2,50,86,624/- made by AO merely on the basis of self-made assumptions and irrelevant facts

6. On the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed, in such situation and in the absence of corporation from the side of the assessee we proceed to dispose of the appeal *exparte*.

7. Before us at the outset the Ld. DR supported the order of the AO and submitted that the required details were furnished by the

assessee in compliance of the notice. AO, therefore, for the reasons noted in the order made the additions. He submitted that even before CIT(A), there was no appearance from the side of the assessee, CIT(A) thereafter for the reasons noted in the order has dismissed the appeal. He submitted that before the Tribunal also assessee has not appeared which shows that callous approach of the assessee. He, therefore, submitted that the order of the CIT(A) be upheld.

8. We have heard the Ld. DR and perused the material available on record. The perusal of the CIT(A) order reveals that the CIT(A) has passed exparte order without deciding the issue on merits. Sub section 6 of 250 of the Income Tax Act mandate the CIT(A) instead the points in dispute and thereafter assigned the reason in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merit Ld. CIT(A) has failed to follow the mandate required in sub section 6 of 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and parties should be condemned unheard.

9. In view of these facts and circumstances of the case we set aside the impugned order of the CIT(A) and restore the issue to the file of the CIT(A) for re-adjudication of the issues after granting sufficient opportunity of heaving to the assessee. The assessee is also directed to furnish the details called for by the lower

authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits, the grounds raised by the assessee.

Thus, the grounds of the assessee are allowed for statistical purpose.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.05.2024

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .05.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI