

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.357/LKW/2023
A.Ys. 2018-19

Samriddhi Progressive E. Pharma Private Limited, 2 nd Floor, T.S. Tower Ashok Marg Lucknow (U.P.)	Vs.	Income Tax Officer, National e-Assessment Centre, Delhi.
PAN AAWCS 0681E		
(Appellant)		(Respondent)

Appellant by	Shri Vivek Dubey
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	03/04/2024
Date of pronouncement	29/ 04/2024

ORDER

This appeal has been preferred by the assessee against the order dated 22.09.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2018-19 wherein, the assessee's appeal has been dismissed in limine for the reason of non compliance.

2. The brief facts of the case are that the assessee is a Private Limited Company, engaged in retail business. The assessee e-filed return of income on 31.10.2018, declaring a total income of

Rs.130/-. Subsequently, the assessee revised its return of income on 12.02.2019, declaring a total income of Rs. at Rs.4,52,490/-. During the year under consideration, the assessee had earned income from profit and gains from business/profession of Rs.4,52,490/-. The case was selected for complete scrutiny under the E- Assessment Scheme, 2019 and statutory notices were issued requiring compliance by the assessee. However, since there was no compliance from the assessee's side, the Assessing Officer completed the assessment u/s. 144 r.w.s. 143(3A), 143(3B) and 144B of the Income Tax Act, 1961 (hereinafter called the 'Act'), assessing the total income at Rs.39,52,432/-, treating the same as unexplained cash credit u/s.68 r.w.s. 115BBE of the Act.

3. Aggrieved, the assessee preferred an appeal before the Id. First Appellate Authority. However, here again, in spite of various opportunities, as enumerated in the appellate order, no response was forthcoming from the side of the assessee and the assessee's appeal came to be dismissed in limine by the Id. First Appellate Authority.

4. Now, the assessee has approached this Tribunal challenging the dismissal of his appeal by the NFAC by raising the following grounds of appeal:

“1. Arbitrary Addition:-That in law and in the facts and circumstances of the appellant’s case, the learned CIT(A) has grossly erred in sustaining the addition made by Assessing Officer of Rs.34,99,942/- u/s. 68.

That, assessee has already explained that the addition made u/s. 68 was actually taken as loan and the details of loan amount along with loan purpose & lender had been given in reply against notice issued u/s. 133(6), in spite of the explanation provided, Assessing Officer made the addition of loan amount u/s. 68. The action of Assessing Officer is purely unjustified action on basis of law & facts.

2. That, the addition sustained by the Ld. Assessing Officer is arbitrary, unwarranted, unjustified and unsustainable in law and on facts therefore, addition to be deleted.

3. That the appellant seeks permission to modify and/or add any other ground or grounds of appeal as the circumstances of the case might require on justify.”

5. The assessee was represented by one, Shri Vivek Dubey, who, at the time of hearing, moved an application dated 03.04.2024 signed by the counsel of the assessee, Shri Ashwani Jaiswal, C.A., stating therein that the counsel of the assessee is out of station, hence, the hearing in this case may be adjourned. A perusal of the record shows that the appeal was adjourned at the request of the counsel of the assessee on 24.01.2024 and

28.02.2024 and on the last date of hearing i.e. on 03.04.2024 too the Counsel of the assessee moved an application for adjournment. In view of repeated adjournments being sought and looking into the facts of the case, I deem it appropriate to proceed with the hearing of the appeal ex-parte qua the assessee and the application for adjournment is rejected.

6. Since the order passed by NFAC was an ex-parte order, the ld. Senior D.R. had no objection to the restoration of appeal to the NFAC.

7. I have heard the ld. Senior D.R. and have also perused the material on record. It is evident that there was complete non compliance on the part of the assessee during the course of first appellate proceedings. However, looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the NFAC with the direction to provide one more opportunity to the assessee to present his case and I also caution the assessee to fully comply with the directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete

liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

8. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 29/04/2024)

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Aks -

Dtd. 29 /04/2024

Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Guard File*

(2) *The respondent*

(4) *Departmental Representative*

Assistant Registrar