

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.427/LKW/2023
A.Ys. 2017-18

Ram Saran, 55, Aghaiya, Mohallalganj, Lucknow. PAN FJLPS 6765K	Nigoha,	Vs.	Income Tax Officer-4(3), Lucknow.
(Appellant)			(Respondent)

Appellant by	None (Adj. Application filed by Shri Piyush Kumar Kariwala, CA
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 order dated 31.10.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2017-18 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 an individual. The return of income for the captioned year was filed on 28.08.2018 declaring a total income of Rs.3,18,000/-. The

assessee's case was selected for scrutiny through CASS. In view of non-compliance by the assessee, the assessment was completed u/s. 144 of the Income Tax Act, 1961 (hereinafter called the 'Act') at a total income of Rs.31,33,000/-.

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. BECAUSE the Id. Commissioner of Income tax (Appeals) has erred in law and facts in dismissing the appeal of the appellant without giving proper opportunity of being heard and is against principle of natural justice.

2. BECAUSE the Id. Commissioner of Income tax (Appeals) has erred in law and facts in dismissing the appeal ex parte without going into the merit of the case.

3. BECAUSE the Id. Commissioner of Income tax (Appeals) has erred in law and facts in upholding the addition of Rs.31,33,000/- on the sole ground that the assessee has not made compliance to the notice of the A.O without appreciating that the appellant has filed detail of persons from whom he has received the impugned amount on income tax portal.

4. *BECAUSE the Id. Commissioner of Income tax (Appeals) has erred in law and facts in not appreciating the fact that the appellant is engaged in the business of selling and developing of plots and lands on commission basis.*

5. *BECAUSE the Id. Commissioner of Income tax (Appeals) has erred in law and facts in not appreciating that the appellant has received commission on the execution of the sale deed and has also received some amount in advance for the sale deed and development of plots and lands from the other parties.*

6. *BECAUSE the Id. Commissioner of Income tax (Appeals) has erred in law and facts in not appreciating that the assessee has submitted through online on Income tax Portal the detail of the persons from whom cash has been received during the impugned assessment years which were deposited in his bank accounts.*

7. *That appellant craves for leave of the court to addition or alteration of any ground of appeal subsequently.”*

5. None was present for the assessee when the appeal was called out for hearing. However, an application dated 02.04.2024 seeking adjournment was placed before me citing that relevant documents which might be required at the time of hearing were yet to be received from the assessee. However, looking into facts of the case, I reject the adjournment application and proceed to adjudicate the appeal.

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

7. I have heard Senior Departmental Representative 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