

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.171/LKW/2023

A.Ys. 2012-13

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| Sonu Singh Yadav, F 720, Gujaini, Kanpur-208022 PAN ACRPY 2713M | Vs. | Income Tax Officer, Ward 1(2)(4), Kanpur-208001 |
| (Appellant) | | (Respondent) |

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| Appellant by | None (Adj. Application filed by Shri Sudhir Kumar Tiwari, Advocate |
| 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 27.03.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2012-13 wherein, the assessee's appeal has been dismissed in limine for the reason of non compliance.

2. The facts of the case, in brief, are that in the case of this assessee, information was received from N.M.S. module that the assessee had entered into contracts 45 times for Rs.10,00,000/-

or more. The Assessing Officer issued notice u/s. 148 of the Income Tax Act, 1961 (hereinafter called the 'Act') dated 29.03.2019 to the assessee but there was no compliance from the assessee's side. A fresh notice u/s. 142(1) of the Act was issued on 15.10.2019 with the direction to file return of income and to provide Bank details etc. Again there was no compliance by the assessee. To provide another opportunity, notice u/s. 142(1) of the Act dated 15.01.2019 was issued which also remained un-complied. Since there was no compliance from the assessee's side, the Assessing Officer passed ex-parte order and made addition of Rs.7,72,002/-.

3. Aggrieved, the assessee preferred an appeal before the ld. 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 ld. 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:

“01. THAT the AO as well as CIT(A)/NFAC has failed to provide the any valid notice to the assessee, being assessee was residing at Mumbai since 2009, hence the notice issued by the AO as well as CIT(A) /NFAC was not received by the assessee, hence the order passed invalid and liable to be quashed.

02. THAT the AO has arbitrarily in adding income of Rs.7,72,000/- on making presumption of 1 percent from gross contract value from share transaction statement, it is quite clear that gross receipt are less than gross purchase before deducting any kind of brokerage, the CIT(A)/NFAC upheld the same, which is bad in law and contrary to the provisions of law be quashed.

03. THAT, the CIT(A)/NFAC as well as AO has failed to appreciate that the 1 percent value of entire gross contract value from share transaction statement transaction is contrary to facts, bad in law be quashed.

04. THAT, the CIT(A)/NFAC has upholding the income of Rs.7,72,000/- on making presumption of 1 percent from gross contract value from share transaction statement is contrary to facts, bad in law be deleted.

05. THAT the appellant craves leaves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”

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 due to Holi Festival, the papers/documents related to appeal could not received from the local counsel, and, therefore, necessary written submissions could not be prepared. However, looking into facts

of the case, I reject the adjournment application and proceed to adjudicate the appeal.

6. At the outset, it was noted that the appeal filed by the assessee is barred by limitation by 344 days. The assessee has submitted an application for condonation of delay in filing the appeal stating therein that the order passed by Id. CIT(A)/NFAC was received by the Junior Counsel, who did not inform the assessee and the appeal against the order of NFAC could not be filed before the ITAT within time. It was further submitted that when the demand was raised by the Revenue, the assessee contacted the Senior Counsel, who advised to file the present appeal before the ITAT. Thus, the appeal was filed belatedly by 344 days. It has been prayed that the delay caused in filing the appeal was not deliberate and was beyond the control of the assessee and therefore, the same may be condoned and the appeal be heard on merits.

7. Per contra, the Id. Senior Departmental Representative had no objection to the delay being condoned.

8. I have heard Id. Departmental Representative and have also perused the materials available on record. From a perusal of

application for condonation of delay, I am of the considered view that the reason for not filing the appeal within the stipulated time is genuine and beyond the control of the assessee. Therefore, I condone the delay of 344 days and admit the appeal for hearing.

9. 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.

10. 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.

11. 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