

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH “SMC”, LUCKNOW**

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.428/LKW/2023

A.Ys. 2018-19

Unmesh, 4/531 Vikas Nagar, Lucknow. PAN AAAAU 0819N (Appellant)	Vs.	Jt. Commissioner of Income Tax-1, Lucknow. (Respondent)
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Appellant by	None present for the assessee
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 08.11.2023 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 an Association of Persons and registered under the Societies

Registration Act, 1860. The assessee filed its return of income on 04.02.2019 declaring total income at Rs.NIL. While processing the return u/s. 143(1) of the Income Tax Act, 1961 (hereinafter called the 'Act'), the Centralized Processing Centre (CPC), Bengaluru disallowed exemption u/s. 11 of the Act of Rs.42,65,019/- and assessed the total income of the assessee at Rs.42,66,590/-. Thereafter, the assessee moved an application for rectification before the Assessing Officer, which was rejected by him u/s. 154 of the Act.

3. Aggrieved, the assessee preferred an appeal before the Id. First Appellate Authority. However, in spite of various opportunities, as enumerated in the appellate order, there was non-compliance on the part of the assessee and resultantly, the assessee's appeal came to be dismissed 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 Id. CIT(A) has erred in law and on facts in upholding that the Id. Assessing Officer has rightly denied the claim of exemption u/s 11 of the Income-tax Act since

the appellant has not filed Form 108 as per time prescribed u/s 11(2) of the Act.

2. BECAUSE the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.42,65,019/- on the sole ground that the assessee has filed Form 108 beyond the due date.

3. BECAUSE Ld. CIT(A) has erred in law and on facts in not appreciating that it is settled law by the Hon'ble Apex Court and jurisdictional High Court and various High Courts that delay in filing Form-10 is condonable and Rule 17 of the Act is directly and not mandatory and Form10B should be with the Ld. A.O at the assessment proceedings.

4. BECAUSE the Ld. CIT(A) has erred in law and on facts in upholding the denial of exemption u / s 11 of the Act without appreciating the fact that Form 108 was the Revenue/Assessing Officer at the time of passing assessment order and even passing order u / s 154 of the Act.

5. BECAUSE the Ld. CIT(A) has erred in law and on facts in not examining the issue that de hors the computation of income u / s 11 of the Act, the basic requirement of law is that the Income tax Act levies tax on income as per income and expenditure account and not on the turnover or gross receipts.

6. BECAUSE the Ld. Assessing Officer has erred in law and on facts in not appreciating the basic principle of accountancy that income liable to tax is the profit after setting off the expenses incurred out of receipts with reference to the income & expenditure statement.

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 are 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 ld. CIT(A) was an ex-parte order, the ld. Senior D.R. had no objection to the restoration of appeal to the ld. CIT(A).

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 ld. CIT(A) 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 ld. CIT(A) in the set-aside proceedings when called upon to do so, failing which, the CIT(A) 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