

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.314/LKW/2023
A.Ys. 2016-17

Dhananjay Warehousing, V 6, Rampura Garden, Bareilly-243001 PAN AADFD 9603M (Appellant)	Vs.	Income Tax Officer-1(2), New- Bareilly (Respondent)
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Appellant by	Shri Ravindra Agarwal, CA
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	16/05/2024
Date of pronouncement	28/05/2024

ORDER

This appeal has been preferred by the assessee against order dated 28.07.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2016-17 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 enjoys income as transport contractor and CFA of various companies and also earn interest income. The assessee filed his return of income for the year under consideration on 16.10.2016 declaring

total income of Rs.7,93,650/- in the status of firm. Subsequently, the case was selected for limited scrutiny and notices u/s. 143(2) of the Income Tax Act, 1961 (hereinafter called the 'Act') were issued on 23.06.2017 and 06.07.2017. During assessment proceedings, various e-notices u/s. 142(1) of the Act were issued but no compliance was made by the assessee. The Assessing Officer (AO) proposed various additions and afforded opportunity to the assessee to file its explanation with regard to the proposed additions. When no compliance was made, the AO completed the assessment at Rs.42,99,080/-.

3. Aggrieved, the assessee approached the ld. First Appellate Authority challenging the said additions. However, again, there was no compliance by the assessee and, therefore, the appeal of the assessee came to be dismissed by the NFAC.

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. That the authority below has made an assessment order Dt.12/10/2018 where in the notice u/s 142(1) for fixing the date of 03/10/2018 was served upon the Assessee through Email only on 17/10/2018.

2. *That the authority below has erred in law as well in fact while passing the Assessment order in haste without giving proper opportunity to the Assessee*

3. *That the authority below has erred in law as well in fact while adding the whole turnover difference in the turnover difference in form 26 AS of traces and the Audited profit and Loss Alt for a sum of Rs. 35,05.427/- as undisclosed receipts to the returned income of the Assessee AY. 2016-17*

4. *That the authority below has erred in law as well in fact in totally ignoring the facts, the information and papers available on record while making an addition of Rs. 35,05,425/- to the returned income of the Assessee.*

5. *That the authority below has erred in Law as well in fact in considering and understanding the nature and circumstances of the turnover of Rs. 35,05,425/- as pointed out in the notice of limited scrutiny*

6. *That the authority below has erred in law as well in fact in passing the Assessment order squarely ignoring all the information, facts, papers on record, nature and circumstances of the Assessee contractor while making huge addition of Rs. 35,05,425/- to the returned income of the Assessee for A.Y. 2016-17.”*

5. The ld. A.R. submitted that the issue involved was mismatch between Form-26AS and the receipts as per the audited accounts. It was further submitted that a reconciliation statement had been duly filed before the lower authorities but the same was not considered by the lower authorities and, therefore, in the interest of justice, the appeal may be restored to the Office of the

Assessing Officer (AO) and undertook to ensure complete compliance in the set aside proceedings.

6. The ld. D.R. had no objection to the restoration of appeal to the AO.

7. I have heard both the parties 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 assessment proceedings and 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 AO to re-examine the reconciliation and 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 AO in the set-aside proceedings when called upon to do so, failing which, the AO 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 28/05/2024)

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Aks –
Dtd. 28/05/2024

Copy of order forwarded to:

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| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>Departmental Representative</i> |
| (5) <i>Guard File</i> | |

Assistant Registrar