



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

**BEFORE SHRI G. D. PADAMAHSHALI, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.77/LKW/2024
Assessment Year: 2017-18

Medical Pollution Control Committee 21E Block, Panki Kanpur City 208020 PAN:AAAAC3243Q (Appellant)	v.	The Asstt. Commissioner of Income Tax Circle 1(2)(1) Kanpur (Respondent)
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Appellant by:	Shri Jitendra Kumar Yadav, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	25	06	2024
Date of pronouncement:	25	06	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 01.01.2024 for the assessment year 2017-18.

2. At the outset, the ld. counsel appearing on behalf of the assessee without stressing on the merits of the case submitted that, the ld. CIT(A), NFAC passed an ex-parte order dismissing the appeal of the assessee. Moreover, he has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order. Therefore, in the interest of justice, the matter may be restored to the file of the ld. CIT(A), NFAC, where assessee would represent and prosecute its case on merits by adducing requisite material in support of grounds of appeal raised before the ld. CIT(A), NFAC.

3. The ld. D.R., per contra, relying on the orders of the authorities below, submitted that the ld. CIT(A), NFAC afforded various opportunities to the assessee to represent its case, but the assessee failed to contest its case before the ld. CIT(A), NFAC. Therefore the ld. CIT(A), NFAC was justified in dismissing the appeal preferred by the assessee and no interference is called for in his order.

4. We have heard both the parties and perused the material placed on record. We find that the CIT(A), NFAC, Delhi has dismissed the appeal without providing proper opportunity to the assessee. The order so passed by the ld. CIT(A), NFAC is patently non-speaking and has not adjudicated on merits of the addition made by Assessing Officer. Moreover, he has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order.

5. As per provisions of section 250(6) of the Act, the Commissioner (Appeals) was obliged to dispose of the appeal in writing after stating the points for determination and to then pass an order on each of the points which arose for consideration; and the Commissioner (Appeals) was further obliged to state the reason for his/her decision on each such points which arose for determination. The Commissioner (Appeals) is duty-bound to dispose of the appeal through a speaking order on merits, on all the points which arose for determination in the appellate proceedings, including on all the grounds of appeal. Moreover, the perusal of section 251(1)(a) and (b) and further the perusal of Explanation of section 251(2) shows that the Commissioner (Appeals) is required to apply his/her mind to all the issues which arise from the impugned order before him/her, whether or not these issues have been raised by the assessee before him/her. If the order of the Commissioner (Appeals) on merits is a summary order, it amounts to non-application of mind. This non-

application of mind is a contravention of statutory role of the Commissioner (Appeals) under section 251(2) of I.T. Act. Also, section 251(1)(a) provides that while disposing of an appeal against assessment order, Commissioner (Appeals) shall have the power to confirm, reduce, enhance or annul the assessment. Similarly, the section 251(1) (b) provides that in disposing of an appeal against an order imposing a penalty, the Commissioner (Appeals) may confirm or cancel such orders or vary it so as to either to enhance or to reduce the penalty. On cumulative consideration of the provisions of section 250(6) read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) and Explanation of section 251(2), it is concluded that the Commissioner (Appeals) is not empowered to dismiss the appeal for non-prosecution of appeal and is obliged to dispose of the appeal on merits. In this view of the matter, another opportunity of hearing requires to be given to the assessee to represent its case fully before the Id. CIT(A).

6. In view of the above, the matter is remitted to the file of the Id. CIT(A), to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee, preferably within two months from the date of receipt of this order. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 25/06/2024.

Sd/-
[G. D. PADAMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:25/06/2024
JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar