

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA No. 421/Nag./2023
(Assessment Year : 2017-18)

Bhagatram Rawaldas Motwani,
Nagpur
PAN – AFCPM2197M

..... Appellant

v/s

Income Tax Officer (ITO), Circle-4,
Nagpur

..... Respondent

Assessee by : Shri K.P.Dewani, Advocate
Revenue by : Shri Surjit Kumar Saha, Sr.DR

Date of Hearing – 20/06/2024

Date of Order – 20/06/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been preferred by the Assessee challenging the impugned order dated 31/10/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned CIT (A), Nagpur, ["*learned CIT (A)*"], for the assessment year 2017-18.

2. The Assessee has raised following grounds of appeal:—

“1] The learned CIT(A) erred in dismissing the appeal without adjudicating merits of additions made by A.O.

2] Order passed by learned CIT(A) is without providing reasonable opportunity of being heard and is in violation of principles of natural justice. Addition as made ought to have been deleted.

3] Order passed by learned CIT(A) dismissing the appeal of assessee is illegal, invalid and bad in law.

4] Income determined at Rs.95,31,263/- is unjustified, unwarranted and excessive.

5] The addition made by A.O. at Rs.32,39,983/- on account of commission is unjustified, unwarranted and excessive.

6] The learned A.O. erred in concluding assessee has unrecorded turnover of Rs.6,47,99,677/- and income there upon at Rs.32,39,983/- is required to be added in assessment framed.

7] The assessee denies liability to pay interest under section 234A, 234B and 234C of I.T. Act, 1961. Without prejudice, levy of interest under Section 234A, 234B and 234C of I.T. Act, 1961 is unjustified, unwarranted and excessive.

8] Any other ground that shall be prayed at the time of hearing. ”

3. The assessee submitted as follows;

3.1 The assessee is engaged in business activity of trading of Onion and Potato and business activity of Kachha Arahtiya (Commission Agent) in APMC Market.

3.2 The assessee is aged about 60 years. Various notices referred in appellate order not received physically by assessee. The assessee is not well versed with procedure of e-proceedings and digital communication method. E-mail is not used by assessee personally. This resulted in non-receipt /noticing of various notices. Non-compliance of hearings in appellate proceedings is unintentional.

3.3 Hon'ble CIT(A) dismissed grounds of appeal for non-prosecution of assessee without adjudicating the issue on merits. Order passed is liable to be set aside.

3.4 Reliance on:

i) ITAT order in ITA No. 297/Nag/2023 in case of Shrinivasa Construction vide order dated 30/04/2024.

ii) ITAT order in ITA No. 214 to 219/Nag/2022 in case of Shri Shirkari Builders & Developers vide order dated 21/12/2023.

4. We have heard the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that despite a number of opportunities granted by the learned CIT(A), the assessee did not make any submission for which the learned CIT(A) dismissed the appeal for want of prosecution. At the same time, it is also seen that the learned CIT(A) has not decided the appeal on merit. As per the provisions of section 250(6) of the Act, the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. However, in the instant case, the learned CIT(A) has dismissed the appeal for want of prosecution and has not decided the appeal on merit which he was required to do. Considering the totality of the facts of the case and in the interest of justice, we deem it fit and proper to restore the issue to the file of the learned CIT(A) with a direction to grant one last opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per fact and law by passing a speaking order. The assessee is also hereby directed to make his submission on the appointed date without seeking any adjournment under any pretext failing which the learned CIT(A) is at liberty to pass appropriate

order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

5. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 20/06/2024.

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

**Sd/-
K.M. ROY
ACCOUNTANT MEMBER**

NAGPUR, DATED: 20/06/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Rajesh V. Jalit
PS (on contract)*

TRUE COPY

By Order

Sr.Private Secretary
ITAT, Nagpur