

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “B” BENCH, BANGALORE**

**Before Shri Laxmi Prasad Sahu, Accountant Member
and
Shri Soundararajan K., Judicial Member**

ITA No. 347/Bang/2024 (Assessment Year:2017-18)		
Anand Immanuel Panchikal B3, South Avenue, No. 12 17th B. Main, 6th Block Koramangala 560095 PAN – ABQPP5573J	vs.	DCIT, Circle 6(1)(1) II Floor, BMTC Building Koramangala 560095
(Appellant)		(Respondent)
Assessee by:	Shri Zain Ahmed Khan, CA	
Revenue by:	Shri Subramanian S., JCIT-DR	
Date of hearing:	26.06.2024	
Date of pronouncement:	04.07.2024	

ORDER

Per: Soundararajan K.,J.M.

This appeal filed by the assessee challenges the order of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 29.12.2023 in respect of Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the Id. Assessing Officer (AO) rejected the claim of the assessee to pay tax u/s. 44AD of the Income Tax Act, 1961 (the Act) at 8% on the ground that the assessee is a commission agent and, therefore, as per Sec. 44AD(6) of the Act he is not eligible to pay tax u/s. 44AD. Against the said order the assessee filed an appeal before the CIT(A) and contended that the mere deduction of TDS by the payee would not treat the petitioner as commission agent and therefore prayed to set aside the order. The assessee further contended that no show cause notice was issued by the Id.

AO before passing the assessment order and, therefore, the same is against the principles of natural justice. The CIT(A) issued hearing notices on 5 occasions but the assessee had replied only for the notice dated 12.05.2023 and sought for an adjournment and thereafter no appearance was made before the CIT(A) and, therefore, the CIT(A) dismissed the appeal for non-prosecution.

3. Against the said order of the CIT(A) the present appeal has been filed by the assessee before this Tribunal. At the time of hearing the learned A.R. of the assessee submitted that the assessee was not properly guided by his then authorised representative and, therefore, the assessee was not aware of the proceedings before the Id. CIT(A). Further, the learned A.R. submitted that the assessee was also having some ailment and, therefore, he was not able to follow up the appeal proceedings. Therefore, the non-appearance was neither wilful nor wanton and prayed to allow the appeal.

4. The learned D.R., on the other hand, relied upon the orders of the lower authorities and prayed to dismiss the appeal.

5. We have heard the rival contentions and perused the material on record. On going through the assessment order, the Id. AO had issued notices u/s. 143(2) and 142(1) of the Act and also granted an opportunity of being heard about the escapement of income. But the AO citing time barring, had passed the assessment order thereafter. Further the assessee was not able to make out his case before the Id. CIT(A), as he was not informed about the proceedings by the then authorised representative and, therefore, the Id. CIT(A) had passed an ex parte order. Therefore, in the interest of justice we are giving one more opportunity to the assessee to appear before the Id. AO to explain the facts in detail.

6. We, therefore, set aside the orders of the lower authorities and remit the issue to the file of the AO to decide the issue afresh after granting an

opportunity of being heard to the assessee. We also make it clear that the assessee should cooperate with the ld. AO in completing the assessment at the earliest without seeking unnecessary adjournments. In case of failure the assessee will not get any leniency.

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

Order pronounced in the open Court on 4th July, 2024.

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bengaluru, Dated: 4th July, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bangalore