

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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.36/Lkw/2024
Assessment year:2016-17

M/s Unnao Distilleries And Breweries Ltd., 16/19, C-2, Shankar Villa, Civil Lines, Kanpur. PAN:AAACU3741R (Appellant)	Vs.	Dy.C.I.T. (TDS), Kanpur. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) Appeal vide I.T.A. No.36/Lkw/2024 has been filed by the assessee for assessment year 2016-17 against impugned appellate order dated 08/12/2023 (DIN & Order No.ITBA/APL/S/250/2023-24/1058590830(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The grounds of appeal are as under:

- "1. *Because the CIT(A) has erred on facts and in law in holding that the assessee has not made any compliance to the notices issued which is incorrect in as much as the three notices as alleged to have been issued, the first notice did not contain any attachment; an adjournment was sought with respect to second notice issued, and there was no communication for the third*

notice, by the time the assessee could respond, the order was passed, the assessee being prevented by sufficient and reasonable cause, under bonafide belief, the order passed ex-parte by CIT(A) be set aside.

2. *Because the CIT(A) has erred on facts and in law in upholding the order passed u/s 201(1)/201(1A) of the Act, 1961 as passed by the AO(TDS) which is contrary to the facts and provisions of law in as much as there was no liability to deduct TDS, the tax liability of Rs.15,30,756/- as created by the AO, is bad in law and be deleted.*
3. *Because the CIT(A) has erred on facts and in law in upholding that the security charges paid to various persons on which TDS has been deducted, has not been deducted as held by the AO and upheld the liability created by the AO the same be deleted.*
4. *Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has erred in upholding that TDS ought to be deducted on all heads of expenses as such as repairs and maintenance, vehicle running, advertisement and bottling charges received, overlooking that none of the expenses incurred are contract based or have been incurred beyond a specified limit, the amount paid is bill wise, the order passed is erroneous the liability of Rs.15,30,556/- created being totally unwarranted be deleted.*
5. *Because the order passed by CIT(A) is not a speaking order, hence the same is not maintainable, be set aside."*

(A.1) During appellate proceedings in Income Tax Appellate Tribunal ("ITAT" for short), a paper book was filed from the assessee's side, containing the following particulars:

S.No.	Particulars
1.	Copy of screen shot showing reason for seeking adjournment on 30/11/2024
2.	Copy of notice dated 23/11/2023 for fixing the hearing on 30/11/2023
3.	Copy of acknowledgement No.400592151111023 dated 24/10/2023

(B) At the time of hearing before us, the assessee was represented by Shri Rakesh Garg, Advocate and Revenue was represented by Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.). The learned Counsel for the assessee, drawing our attention to ground No. 1 of appeal, referred to the aforesaid paper book and vigorously submitted that the learned CIT(A) did not provide reasonable opportunity to the appellant assessee. He also submitted that the issues in the appeal before the ITAT should be restored back to the file of the learned CIT(A) with the direction to pass fresh order in accordance with law after providing reasonable opportunity to the assessee. The learned Sr. Departmental Representative expressed no objection to the submissions made from the assessee's side by the learned Counsel for the assessee. Representatives of both sides were in agreement that the issues in dispute should be restored back to the file of the Assessing Officer with the direction to pass fresh order in accordance with law after providing reasonable opportunity to the assessee.

(C) We have heard both sides. We have perused materials on record. On perusal of records, we find that the learned CIT(A) issued notice dated 23/11/2023 to the assessee whereby compliance date was fixed on 30/11/2023, leaving intervening period of only six days between date of issue of notice and date fixed for compliance. On perusal of records, we also find that the assessee sought for adjournment of the hearing, and requested 15 days time to comply with the notice on the ground that "*gathering of material from multiple sources requires time*". However, the learned CIT(A) did not consider the request for adjournment favourably and passed an ex-parte order dated 08/12/2023, against which the assessee has filed this appeal before the ITAT. On perusal of records, we find no materials to suggest that the assessee was deliberately trying to delay the

appeal proceedings before the learned CIT(A) or that assessee was not keen to prosecute appeal filed in the office of the learned CIT(A). We also find from perusal of records that neither the learned CIT(A) has stated reason for declining the request for adjournment of hearing fixed on 30/11/2023; nor has he, in fact, even mentioned that such a request for adjournment was made from assessee's side. On the contrary, the learned CIT(A) has erroneously stated in paragraph 2 of the impugned order that "*regrettably no response whatsoever was forthcoming on the appointed date.*" The fact is, as materials on record of the ITAT show, the assessee did submit response seeking for adjournment and requesting for 15 days time. Moreover, we find that the assessee's appeal has been dismissed in a summary manner without passing speaking order on the points of dispute and grounds of appeal in the appeal filed by the assessee in the office of the learned CIT(A). Under Section 250(6) of the I.T. Act, the learned CIT(A) was required to dispose of the appeal in writing, stating the points for determination, the decision thereof and the reason for the decision. Thus, it is obvious that the learned CIT(A) is duty bound to pass a speaking order on the various grounds of appeal and disputes, through a speaking order. In the present case before us, we find that the learned CIT(A) has failed to follow the requirements of Section 250(6) of the IT Act in letter and spirit.

(C.1) In view of the foregoing, we are of the view that not only did the learned CIT(A) pass the impugned order in a hasty manner without giving proper opportunity to the assessee; but also, the learned CIT(A) failed to comply with the requirements prescribed u/s 250(6) of the IT Act. In fitness of things, therefore, in the specific facts and circumstances of the present appeal before us; and further, as representatives of both sides are in agreement on this; we set aside the impugned appellate order dated 08/12/2023 of learned CIT(A) and direct the learned CIT(A) to pass fresh

order in accordance with law after providing reasonable opportunity to the assessee, and ensuring proper adherence to section 250(6) of the IT Act.

(D) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 20/08/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:20/08/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar