

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2295/DEL/2024
Assessment Year: 2017-18

New Leaf Homes Pvt. Ltd., L-113, Lajpat Nagar, New Delhi-110024 PAN- AADCN 7291 C	<u>Vs</u>	Income-tax Officer, Ward-18(3), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri M.R. Sahu, CA	
Respondent by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	13.08.2024	
Date of pronouncement	20.08.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 12.07.2023, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. That based on facts of the case, and provisions of law, it is prayed that the delay in filling the appeal may kindly be condoned and the appeal may kindly be admitted for hearing.

2. That based on facts of the case, and provisions of law, the CIT(A) erred in dismissing the appeal due to non prosecution without appreciating the fact that appeal hearing notices are being issued using unrelated Email

id.rampalfca@gamil.com without using the Email id. rimmysen8@gmail.com reflected on the face of the Form 35 filed on 14/01/2020 vide E filling Acknowledgement No.291420021140120, thus provisions of section 282 read with rule 127 was not followed, accordingly CIT(A) order dated 12/07/2023 deserves to be quashed.

3. That based on facts of the case, and provisions of law, the CIT(A) erred in dismissing the appeal due to non prosecution without appreciating the fact that appeal hearing notices are being issued using unrelated Email id.rampalfca@gamil.com without using the Email id. rimmysen8@gmail.com reflected on the face of the Form 35 filed on 14/01/2020 vide E filling Acknowledgement No. 291420021140120, thus principles of natural justice offended, accordingly CIT(A) order dated 12/07/2023 deserves to be set aside.

4. That the assessee craves the right to amend, add, delete, replace, all or any of the grounds of appeal either during the course of hearing or at any time before hearing of this appeal.”

2. As per office report, there is delay of 243 days in filing the appeal before the Tribunal. The assessee has moved application for condonation of delay on the ground that notices of hearing issued by the learned CIT(Appeals) were transmitted to unrelated e-mail and were not served on the assessee. The assessee on receipt of SMS in last week of April 2024 contacted his CA who created password and on verification of 'E filing portal-E proceedings' portal it came to the knowledge of the assessee that assessee's appeal was dismissed by learned CIT(A) vide order dated 12.07.2023 for non prosecution.

3. Considering the reasons stated in the condonation application, the delay in filing the appeal is condoned and the appeal is taken up for hearing.

4. Facts, in brief, are that for A.Y. 2017-18 the assessee filed its return of income electronically on 31.10.2017 declaring a loss of (-) Rs.25,87,924/-. The case was selected under complete scrutiny through CASS. The assessee did not respond to the statutory notices issued by the AO. Therefore, the AO completed the assessment ex parte to the assessee u/s 144 of the Act at a total income of Rs. 30,18,953/- by disallowing expenses amounting to Rs. 20,80,935/- and adding back the same to the income of the assessee; and addition of Rs. 35,25,942/- on account of unverified credit entries in the bank account. Aggrieved against it the assessee preferred appeal before the learned CIT(A) who dismissed the appeal and affirmed the action of AO. Aggrieved against it, the assessee is in appeal before this Tribunal.

5. Learned counsel for the assessee submitted that in this case the assessment was framed ex parte to the assessee without affording reasonable time to collect all records and documents. The assessee challenged the assessment order by filing appeal before the learned CIT(Appeals). However, no notice of hearing issued by the learned CIT(A) was ever received by the assessee. He submitted that assessee had duly provided its E-mail ID in form no. 35. However, the hearing notices were issued using unrelated E-mail ID. Under these circumstances there could be no representation before the learned CIT(A). Learned counsel prayed that under these

circumstances the ex parte order of learned CIT(A) dismissing assessee's appeal for non-prosecution may be set aside and matter may be restored to the file of Assessing Officer for de novo assessment after affording reasonable opportunity to the assessee of being heard and to place relevant documentary evidence before the AO in support of its claim.

6. On the other hand learned DR supported the orders of authorities below.

7. I have heard rival submissions and perused the material available on record. It is notice that in the present case there was no effective representation on behalf of the assessee before the assessing authority and the AO framed the assessment u/s 144 of the Act in the absence of the assessee. As a matter of fact before the learned CIT(A) also there was no representation on behalf of the assessee and the learned CIT(Appeals) dismissed the assessee's appeal, ex parte, qua the assessee by solely relying on the order of Assessing Officer. Looking to the facts and circumstances of the case and to subserve the interest of natural justice, in my considered view, it would be fair and reasonable to restore the matter to the file of AO for decision afresh after providing adequate opportunity to the assessee to represent its case. Accordingly, the order of learned CIT(Appeals) is set aside and the matter is restored to the file of AO to frame the assessment afresh after affording reasonable opportunity to the assessee to adduce relevant documentary evidence, if any, in support of its claim.

8. Appeal is allowed for statistical purposes.

Order pronounced in open court on 20th August, 2024.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI