

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

**I.T.A. No. 155/Asr/2024**  
Assessment Year: 2017-18

Raj Kumar Khurana And Sons  
S. R. Gunj, Maharaja Gunj,  
Srinagar, Maharaja Gunj,  
Srinagar,

[PAN: AAGFR4320Q]  
**(Appellant)**

Vs.

The Income Tax Officer, Ward-2,  
Income Tax Office Dharmarth  
Trust Building, Barbar Shah  
Srinagar

**(Respondent)**

Appellant by : Sh. Sudhir Sehgal, A.R.

Respondent by : Sh. Himanshu, Sr. D.R.

Date of Hearing : 21.08.2024

Date of Pronouncement : 27.08.2024

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the Id.  
CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 30.01.2024  
challenging therein dismissal of the appeal ex-parte qua the assessee.

2. At the outset, the Id. counsel for the assessee has submitted that no notices have been received in physical mode and the notices sent on electronic mode could not be acceded due to technical reasons and lack of knowledge of electronic services of notice. Thus, the assessee was prevented by sufficient and reasonable cause to appear before the Id. CIT(A). Consequentially, the worthy CIT(A) has passed the order ex-parte qua the assessee. In support, the Id. AR has submitted a brief synopsis which reads as under:

- “8. Case laws on the issue that lack of knowledge of electronic services of notice is a sufficient cause for non-compliance of notice u/s 250 of the Act.
- 8.1 That Delhi Bench of the Hon’ble ITAT in the case of Egis international S.A. vs. ACIT (ITA No. 1663/Del/2021) A.Y. 2016-17, vide order Dt. 03.08.2023, while dealing with the identical facts has restored the matter back to the file of the CIT(A) NFAC for de novo adjudication on merits after allowing reasonable opportunity of hearing to the assessee because it was brought on record before the Hon’ble Bench that the notices sent to the e- mail of the employee did not reach the assessee and the non-compliance was not deliberate.
- 8.2 In the case of Mohammad Saleem vs. ITO in ITA NO. 28/De/(2023 Dt. 07.06.2023 the delay in filing the appeal against the order of the CIT(A) NFAC has been condoned by the Hon’ble Bench on the ground that the orders of the NFAC were sent through e-mail and assessee due to lack of means and knowledge had no access to the electronic communication mode.
- 8.3 The Mumbai Bench of the ITAT has recently accepted the contentions of the employees company in the case of Triumph International Finance India Limited Vs. DCIT ITA NO.1870/MUM/2020(A.Y.2017-18),that they were not aware of the fact that the notices were being issued electronically and

deleted the penalty imposed u/s 272A(1)(d) of the Act as according to the hon'ble Bench the assessee was prevented by sufficient cause for non-compliance of the notices u/s 142(1) of the Act.

In view of the above stated facts and laws, it stands proved that the assessee was prevented by sufficient cause for non-compliance of the notices u/s 250 of the Act.

9. The CIT(A) has dismissed the appeal without deciding the matter on merits and the submissions & documents filed before the AO has been completely ignored for which the reference is made to the paper book. [Attached herewith]
10. Order of this Hon'ble Bench on identical facts: -
  - 10.1 That in the recent order by this Hon'ble Bench in the case of Gurinderpal Singh vs. with ITA No. 134/Asr/2024 vide order dated 04.06.2024 has remanded back the order of CIT(A) for afresh adjudication on identical facts.
11. Order passed by the CIT(A) NFAC is not a speaking order
  - 11.1 The perusal of the findings of the CIT(A) in the appellate order proves that the order of the CIT(A) is not a speaking order because while recording findings the submissions & documents filed by the assessee during the course of assessment proceedings has not been considered. Further, it is a fact that the assessee is carrying on the business of trading in cloth/textile and the deposit in cash were out of the sale proceeds and the CIT (A) should have considered the facts and pass the judgment on merits.
  - 11.02 The kind attention of this Hon'ble Bench is drawn to the order of the Delhi Bench of the ITAT in the case of Fujitsu Consulting India (P) Ltd. vs. ACIT [2019] 110 taxmann.com 177 in which while relying on the judgment of Hon'ble Apex Court in the case of KapurchandShrimal vs. CIT [1981] 7 Taxman 6 (SC) has been held that the CIT(A) NFAC has to pass a speaking order after duly examining and considering the contentions raised by the assessee.

“While dismissing the grounds raised by the assessee, the impugned order is woefully silent on the reasons as to why the Ld. CIT (A) agrees to the observations of the assessing officer. Thus, it is very much evident that there has been a failure on the part of the Ld. first appellate authority to properly

adjudicate the grounds before her. There is no independent application of mind by the Ld. first appellate authority and she has failed to consider all of the contentions raised by the assessee in the appeal before her. The Ld. first appellate authority has simply dittoed the observations of the assessing officer and has upheld the findings of the assessing officer without even examining the observations of the AO vis-a-vis the objections/contentions of the assessee. It is our considered opinion that it was incumbent upon Ld. first appellate authority to pass a speaking order after proper appreciation of the facts before her. It may not be out of place here to note that as held by the Hon'ble Apex Court in the case of KapurchandShrimal v. CIT [1981] 7 taxmann 6/131 ITR 451 (SC) in connection with the appeal before the Ld. CIT (A) that it is the duty of appellate authority to remove the errors in the order of authorities below and remit the issue with or without direction for reconsideration unless prohibited by law. Accordingly, since the Ld. CIT (A) has not passed a speaking order on this issue, we are of the considered opinion that the interest of justice will be served if this issue is remitted to the file of the Ld. CIT (A) with a direction to pass a speaking order after duly examining and considering all the contentions raised by the assessee. Accordingly, the appeal is restored to the file of the Ld. First Appellate Authority with a direction to re-adjudicate the issue after duly considering all the contentions of the assessee which it may raise in this regard and after giving proper opportunity to the assessee. Needless to say, passing of a speaking order is mandatory. ”

In view of the above said facts and circumstances of the case, it is very humbly requested to your Honour that the above said case may, please, be set-aside CIT(A)-NFAC Delhi on account of natural justice.”

3. Per contra, the Ld. Addl. CIT DR stands by the impugned order. However, he has no objection to the request of the assessee in view of natural justice.

4. We heard both the sides, perused the record, impugned order and case law cited before us. It is undisputed fact that the Id. NFAC, Delhi has rejected the appeal of the assessee by passing an order ex-parte qua the assessee, merely stating that no submission was made by the appellant without stating the facts regarding service of the notices on the appellant assessee. Meaning thereby that the Ld. NFAC has rejected the appeal without granting sufficient opportunity of being heard in violation of principles of natural justice.

5. The Delhi Bench of the Hon'ble ITAT in the case of Egis international S. A. vs. ACIT (Supra), on the similar facts has restored the matter back to the file of the CIT(A) NFAC for de novo adjudication on merits after allowing reasonable opportunity of hearing to the assessee. While arriving at the such finding, the Tribunal observed that it was brought on record before the Hon'ble Bench that the notices sent to the e- mail of the employee did not reach the assessee and the non-compliance was not deliberate.

6. In another case, the Mumbai Bench of the ITAT has recently accepted the contentions of the employees company in the case of Triumph International Finance India Limited Vs. DCIT (Supra), that they were not aware of the fact that the notices were being issued electronically and deleted the penalty imposed u/s 272A(1)(d) of the Act by holding that the

assessee was prevented by sufficient cause for non-compliance of the notices u/s 142(1) of the Act.

7. In the present case, the notices were sent on electronic mode could not be acceded due to technical reasons and lack of knowledge of electronic services of notice do constitute sufficient cause for non-compliance of the notices u/s 250 of the Act. In our view, it stands proved that the assessee was prevented by sufficient cause for non-compliance of the notices u/s 250 of the Act.

8. Further, the Ld. CIT (A) has not passed a speaking order on this issue on merits of the case. We are therefore of the considered opinion that in the interest of justice, issue is remitted to the file of the Ld. CIT (A) with a direction to pass a speaking order after duly examining and considering all the contentions raised by the assessee. Accordingly, the appeal is restored to the file of the Ld. CIT(A) with a direction to re-adjudicate the issue after duly considering all the contentions of the assessee and after giving proper opportunity of being heard to the assessee. Needless to say, the assessee shall cooperate in de novo proceedings before the Ld. CIT(A) who shall be passing a speaking order as per mandate.

9. In view of the above, we accept the grievance of the appellant as genuine and accordingly, the matter is restored to the file of the Ld. CIT(A) for de novo adjudication as per law.

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

*Order pronounced in the open court on 27.08.2024*

**Sd/-**  
**(Udayan Dasgupta)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy

By Order