



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

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

ITA No.122/LKW/2023 & 123/LKW/2023
Assessment Year: 2017-18

Rahul Gupta C/o Sanjay Saxena 12, Pratap Enclave Colony, Bisrat G. T. Road, Shahjahanpur-242001.	v.	ITO-3(2) Income Tax Office, Nagheta Road, Hardoi, Uttar Pradesh-241001.
PAN:BXBPG6232M		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjay Saxena, CA		
Respondent by:	Shri. Sanjeev Krishna Sharma, Addl. CIT(DR)		
Date of hearing:	22	08	2024
Date of pronouncement:	29	08	2024

ORDER

PER ANADEE NATH MISSHRA, A.M.:

These two appeals have filed by the assessee are being disposed off through this consolidated order for the sake of brevity and convenience. ITA. No. 122/LKW/2023 pertains to penalty amounting to Rs.25,000/- levied u/s 271A of the Income Tax Act, 1961 (hereinafter "the Act"), which was confirmed by the Ld. CIT(A) in the impugned appellate order dated 25/02/2023, [ITBA/NFAC/S/250/2022-23/1050126663(1)]. ITA. No. 123/LKW/2023 is in respect of penalty amounting to Rs.1,50,000/- levied by the Assessing Officer ("AO") u/s 271B of the Act, which was upheld by the Ld. CIT(A) vide a separate impugned appellate order also dated 25/02/2023, [DIN & Order No: -ITBA/NFAC/S/250/2022-23/1050126523(1)].

2. The assessee's appeal vide the aforesaid two separate impugned appellate orders passed by the Ld. CIT(A) have been dismissed, in identically worded manner, which is being reproduced as under: -

"6.4 Decision:

The claim of the appellant that he had submitted the relevant audit reports at the time of assessment as part of reply to the penalty notice during penalty proceedings before the AO.

5. After receipt of notices, the audit report and ITR were filed physically along with reply dated 27.06.2019 which is admitted in para 4.3 of the assessment order.

In contrast to the above claim, the Form 3CB and 3CD filed bear the date stamp as 28th May, 2022. As these claims run counter to each other, the provisions of section 273B would not be of any avail to the appellant. Placing reliance on the observations in the penalty order, the order is justifiably to be upheld."

3. At the time of hearing before us, on 22/08/2024, the assessee was represented by Shri Sanjay Saxena, CA and Revenue was represented by Shri Sanjeev Krishna Sharma, Addl. CIT, Sr. Departmental Representative. The Ld. Authorized Representative ("AR") for the assessee made common submission in respect of the aforesaid two appeals. He submitted that the assessee's case before the Ld. CIT(A) could not be effectively represented because of death of the assessee's father. A copy of death certificate of late Shri Sushil Kumar Gupta, the assessee's father, was filed along with a copy of legal heir certificate issued by the District Authorities, Hardoi wherein the assessee's name appears as legal representative of late Shri Sushil Kumar Gupta. The Ld. AR submitted that one more opportunity should be granted to the assessee in order to represent the case effectively before the Ld. CIT(A). The Ld. Sr. Departmental Representative for revenue expresses no objection to this.

4. We have heard both sides and perused the material on records. We find that the Ld. CIT(A) has dismissed the appeals of

the assessee by observing some discrepancies in the dates of audit report/Form 3CB/Form 3CD. However, the Ld. CIT(A) did not give any opportunity to the assessee to explain the discrepancy in dates. Therefore, we are of the opinion that the assessee deserves further opportunity before the Ld. CIT(A) to explain his case; as the impugned appellate orders of Ld. CIT(A), each dated 25/02/2023, have been passed without providing opportunity to the assessee for explaining the above mention discrepancies in dates.

5. In view of the foregoing and as representative of both sides are an agreement with this, and in the specific facts and circumstances of the present appeal before us, we set aside the impugned appellate orders of the Ld. CIT(A), each dated 25/02/2023; and we direct the Ld. CIT(A) to pass denovo orders after affording reasonable opportunities to the assessee. These two appeals are disposed off in accordance with aforesaid directions.

6. In the result, both appeals of the assessee are partly allowed.

Order pronounced in the open Court on 29/08/2024.

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 29/08/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

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By order

Assistant Registrar