

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

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

I.T.A. No.96/Lkw/2023
Assessment year:2012-13

Provl. Div. PWD Hamirpur UP PWD Hammirpur, Hamirpur. TAN:KNPP01516E (Appellant)	Vs.	Addl.CIT (TDS), Kanpur. (Respondent)
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Appellant by	Shri Sudhir Kumar Tiwari, Advocate
Respondent by	Shri Sunil Kumar Rajwanshi, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) Appeal vide I.T.A. No.96/Lkw/2023 has been filed by the assessee for assessment year 2012-13 against impugned appellate order dated 14/02/2023 (DIN & Order No.ITBA/NFAC/S/250/2022-23/1049730338(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The grounds of appeal are as under:

- "1. That the CIT(A) has erred on facts and in law in summarily dismissing the appeal ex-parte without giving any opportunity on e-mail address or SMS as provided to the appellate authority by the assessee.*
- 2. That the CIT(A) as well as Assessing Officer has failed to rectify the mistake being apparent on records as the Assessing Officer*

are duty bound to rectify the mistake and pass an appropriate order.

3. *That the CIT(A) has failed to appreciate the facts and circumstances of the case and should have passed a speaking order based on statement of facts and grounds of appeal as mentioned in the Memorandum of appeal and supporting documents.*
4. *That the CIT(A) has failed to appreciate the fact that impugned order dated 06/05/2019 having been passed under section 201(1)/201(1A) of the Act is bad in law and be quashed.*
5. *That the CIT(A) has failed to upholding the order passed u/s 154 of the Act, is contrary to the provisions, bad in law, and be quashed."*

(B) Facts of the case, in brief, are that in this case, a TDS survey u/s 133A(2A) of the Income Tax Act, 1961 ("IT Act" for short) was conducted on 29/11/2018. The Assessing Officer issued notice u/s 201(1)/201(1A) of the IT Act to furnish the details of expenses and TDS/TCS made thereon. The learned Counsel for the assessee appeared and furnished details. As per Assessing Officer, since the complete details were not furnished by the assessee, a notice u/s 201(1)/201(1A) of the IT Act dated 20/03/2019 was issued fixing the date for compliance on 25/03/2019 asking the assessee to submit complete details/documents, ledgers of expenses incurred, bills, vouchers and TDS challans in support of the claim to have made TDS but no one appeared. Under these facts, a demand of Rs.58,48,933/- was created and penalty proceedings u/s 271C were initiated. The assessee moved an application u/s 154 of the Act for rectification of demand created on the ground that the demand raised is mostly on late filing of TDS return and short deduction of TDS and may be waived. The Dy. CIT (TDS) passed an order dated 20/11/2019 and rejected the application of the assessee moved

u/s 154 stating the reason that rectification application of the assessee does not fall within the ambit of section 154 of the IT Act. The assessee went in appeal before learned CIT(A) against the order passed u/s 154 of the Act. Learned CIT(A) issued various notices to the assessee but there was no response from the assessee's side. Ultimately the learned CIT(A) passed an ex-parte order and dismissed the assessee's appeal in limine. Now the assessee is in appeal before the ITAT.

(B.1) At the time of hearing before us, the learned Counsel for the assessee submitted that learned CIT(A) has not decided the issue on merits and instead the appeal of the assessee was dismissed in limine taking adverse view of non compliance of notices of hearing issued by him. He further submitted that the issue regarding merits should be restored back to the file of the learned CIT(A) because the learned CIT(A) is duty bound to pass speaking order on merits. The learned Sr. Departmental Representative for Revenue expressed no objection to this.

(C) We have heard both sides. We have perused materials on record. We noted that learned CIT(A) has passed ex-parte order as according to him, nobody has appeared on the dates 10/08/2020, 23/11/2021, 08/12/2021, 04/01/2023 and 08/02/2023 when the appeal was fixed for hearing before him. From the order of CIT(A), it is apparent that the CIT(A) had issued various notices to the assessee through ITBA and also delivered on e-mail address provided by the assessee however, neither anybody appeared nor filed written submissions and ultimately the CIT(A) passed the ex-parte order. However, we find that learned CIT(A) has not decided the appeal on merits. The learned CIT(A) is duty bound to decide the issue on merits, as provided under section 250(6) of the Act. For ready reference, the provisions of section 250(6) are reproduced as under:

"Section 250

(6) The order of the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

(C.1) In view of the foregoing and as representatives of both sides are in agreement on this; we set aside the impugned appellate order dated 14/02/2023 of the learned CIT(A) and we direct the learned CIT(A) to decide the appeal through denovo order which should be speaking order on merits in accordance with law after providing reasonable opportunity to the assessee and ensuring due compliance of requirements u/s 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 30/09/2024)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:30/09/2024
*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