



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.415/LKW/2024
Assessment Year: 2016-17

Shri Jitesh Kumar Sonkar 7-A, Sabji Mandi Sitapur Road, Lucknow TAN/PAN:ASYPS1555Q (Appellant)	v.	The Income Tax Officer – 3(2) Lucknow (Respondent)
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Appellant by:	Shri D.D. Chopra, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, Sr. D.R.		
Date of hearing:	19	09	2024
Date of pronouncement:	30	09	2024

ORDER

This appeal has been preferred by the assessee against the order dated 18.03.2024, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2016-17.

2. The brief facts of the case are that the assessee e-filed his return of income on 16.10.2016, declaring a total income of Rs.9,60,390/-. The case of the assessee was selected for complete scrutiny based on the reasons of (i) Low income compared to large commission receipts and (ii) Mismatch in sales turnover reported in the Audit Report and ITR. In response to notice under section 143(2) of the Income Tax Act, 1961 (hereinafter called "the Act"), the assessee submitted copy of bank statements, sale vouchers of the sale proceeds, copy of balance

sheet, copy of profit and loss account and schedule of fixed assets. Upon perusal of these documents, the Assessing Officer (AO) noticed that the assessee had purchased Car, amounting to Rs.30,00,000/-. The assessee had shown a car loan amounting to Rs.14,47,165/-. The balance amount, i.e. Rs.15,52,835/- (30,00,000 – 14,47,165) was treated as income of the assessee from undisclosed source and the same was added to the income of the assessee under section 69C of the Act. The Assessing Officer also noticed that the assessee had claimed expenses amounting to Rs.14,75,910/- under various heads. As per the AO, since the assessee had failed to produce the books of account, bills and vouchers for verification, an ad hoc addition @ 20% on the total expenses of Rs.14,75,910/-, (which worked out to Rs.2,95,182/-), was also added to the income of the assessee. Accordingly, the Assessing Officer completed the assessment under section 143(3) of the Act, assessing the total income of the assessee at Rs.28,08,410/-.

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed ex-parte qua the assessee.

4. Now, the assessee has approached this Tribunal challenging the action of the NFAC by raising the following grounds of appeal:

1) Because the learned CIT(A) has grossly erred in not accepting the income returned by the appellant which is based on complete and audited books of accounts, without giving any cogent reasons for disbelieving the same.

2) Because the learned CIT(A) has failed to appreciate that the 3 vehicles mentioned in the balance sheet are old vehicles that were purchased on 27/01/2011, 30/11/2013 and 30/01/2014 respectively partly by bank finance and the margin money was paid by the appellant out of his income/capital. However the learned assessing officer has added back to the income of the appellant.

3) Because the learned CIT (A) has failed to appreciate that the expenses claimed by the appellant are necessary expenses that are based on audited balance sheet and the learned A.O. has grossly erred in making adhoc additions of Rs.2,95,182.00 by disallowing 20% of the expenses on surmises and conjectures, which is more so when the appellant had furnished all the required details before the A.O. and also before learned CIT(A).

4) Because while dismissing the appeal on the ground of noncompliance of notices, the learned CIT (A) has failed to decide the appeal on merits. the order passed by the learned CIT(A) is bad in law as it overlooked the additions made by the assessing officer while disallowing the expenses on adhoc basis.

5) Because the learned CIT(A) has upheld the adhoc additions of 20% made by the assessing officer on business expenses claimed by the appellant amounting Rs.14,75,910.00 merely on the ground of manipulation, without assigning any reason for doing so.

5. The Ld. Authorized Representative for the assessee submitted that there is a delay of 48 days in filing the appeal before the Tribunal. He submitted that the assessee had filed an application dated 02.07.2024 for condonation of delay, duly supported by an Affidavit and Medical Certificate, stating therein that the assessee was suffering from Viral Fever with severe weakness and was advised complete bed rest from 15.05.2024 to 29.05.2024 and further that he was even not able to seek the advice from his Counsel regarding filing of the appeal, therefore, the appeal could not be filed within the stipulated period. He prayed that the delay be kindly condoned.

6. The ld. D.R. had no objection to the delay being condoned.

7. In view of the prayer made by the Assessee, supported by Medical Certificate and no objection by the ld. D.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

8. The ld. AR prayed that the assessee's appeal may be restored to the file of the NFAC for the purpose of adjudication on merits.

9. Since the order passed by NFAC was an ex-parte order, the ld. Senior D.R. had no objection to the restoration of appeal to the NFAC.

10. I have heard both the parties and have also perused the material on record. It is evident that there was complete non-compliance on the part of the assessee during the course of first appellate proceedings. However, looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the NFAC with the direction to hear the appeal on merits. I also caution the assessee to fully comply with the notices and directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

11. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 30/09/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:30/09/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar