



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

**BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.96&97/LKW/2024
Assessment Year: 2018-19

Noman Hussain Shop No.111, Sahara Ganj Hazratganj, Lucknow (Presently at House No.M-1, Lane-3, Friends Enclave, Humama Heights, Budgam, Srinagar, J&K)	v.	The ITO-3(2) Hardoi
TAN/PAN:ACEPH7192J (Appellant)		(Respondent)

Appellant by:	Shri Mustaq Ahmad Mir, Cost Accountant		
Respondent by:	Shri Sanjeev Krishna Sharma, Sr. D.R.		
Date of hearing:	19	09	2024
Date of pronouncement:	21	11	2024

ORDER

PER BENCH:

These appeals have been preferred by the assessee against two separate orders, both dated 05.02.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi for assessment year 2018-19. ITA No.96/LKW/2024 is in respect of quantum addition, whereas ITA No.97/LKW/2024 is in respect of penalty imposed under section 270A of the Income Tax Act, 1961 (hereinafter called "the Act").

2. The brief facts of the case are that the assessee had not filed the return of income for the captioned assessment year. Subsequently, notice under section 148 of the Act was issued on 30.03.2022 for the reason that there were substantial cash deposits and cash withdrawals during the year under consideration as well as Tax had been Deducted at Source in terms of section 194A and 194J of the Act. The assessee did not file the return of income in response to notice issued under section 148 of the Act also. Thereafter, notice under section 142(1) of the Act along with questionnaire was issued to the assessee, but again there was no compliance from the side of the assessee. Subsequently, five more notices were issued by the Department, but there was complete non-compliance on the part of the assessee. Accordingly, the Assessing Officer (AO) proceeded to assess the income of the assessee in terms of section 147 read with section 144 read with section 144B of the Act and completed the assessment at an income of Rs.2,34,00,608/-.

3. Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the assessment order. However, since the appeal before the NFAC had been filed belatedly and there was a delay of 256 days, the NFAC did not admit the appeal

and the appeal was dismissed in limine by the NFAC without condoning the delay.

4. Similarly, in the penalty proceedings, the AO had imposed penalty of Rs.1,61,86,626/- under section 270A(9) of the Act and the appeal before the NFAC against the penalty order was also dismissed without admitting the same, as the appeal had been filed before the NFAC belatedly and there was a delay of 74 days in filing the same.

5. Aggrieved, the assessee has now approached this Tribunal challenging the quantum order as well as penalty order by raising the following grounds:

GROUND IN ITA NO.96/LKW/2024:

1. The Ld. CIT(A) has erred in law as well as on the facts of the case in dismissing the appeal in limine without condoning the delay in filing of appeal.

2. The Ld. CIT(A) had erred in outright rejection of appellant's prayer for condonation of delay filed along with the appeal without passing any reasoned and speaking order on merits, thus causing great prejudice to the appellant.

3. That blatant non-service of notices at non-existent address as admitted by the Ld. A.O. in the order itself which resulted inordinate delay in filing the appeal late has been overlooked in a casual manner is against the principles of natural justice.

4. That Ld. CIT(A) has without any credible justification dismissed the appeal in limine in spite of sufficient and reasonable grounds justifying the delay stated in the application without providing opportunity to the appellant of being heard.

5. That the appellant craves leave to amend, alter or to raise any other additional grounds at the time of hearing of appeal before the hon'ble bench.

GROUND IN ITA NO.97/LKW/2024:

1. The Ld. CIT(A) has erred in law as well as on the facts of the case in dismissing the appeal in limine without condoning the delay in filing of appeal.

2. The Ld. CIT(A) had erred in outright rejection of appellant's prayer for condonation of delay based on credible conclusive evidence without passing any reasoned and speaking order on merits, thus causing great prejudice to the appellant.

3. That Ld CIT(A) has overlooked blatant non-service of notices at non-existent address as admitted by the Ld. A.O. in the assessment order itself which resulted in inordinate delay in filing the appeal late is thus against the principles of natural justice.

4. That Ld. CIT(A) has without any credible justification dismissed the appeal in limine in spite of sufficient and reasonable grounds justifying the delay stated in the application without providing opportunity to the appellant of being heard.

5. That the appellant craves leave to amend, alter or to raise any other additional grounds at the time of hearing of appeal before the hon'ble bench.

6. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that the assessee is a Civil Engineering Consultant, originally a native of Lucknow. The assessee, however, shifted his residence from Lucknow to Srinagar, Kashmir in the year 2015-16 with a view to offer consultancy in upcoming civil and hydro engineering Projects in Kashmir. For this reason, the assessee was unaware of the proceedings initiated by the Assessing Officer, i.e. ITO, Ward 3(2), Hardoi. The Ld. A.R. submitted that as a result, the assessment was completed ex-parte and that for the very same reason, the penalty proceedings were also completed ex-parte. The Ld. A.R. prayed that under the given circumstances, the assessee deserved an opportunity to offer his explanations and file submissions before the Assessing Officer. He prayed that the file may be restored to the AO for the purpose of adjudication on merits after providing opportunity to the assessee. The Ld. A.R. also gave an undertaking that should the assessee be provided with an opportunity, he will ensure proper compliance by the assessee during the set-aside proceedings. The Ld. A.R. also prayed that if the quantum proceedings are set aside, the then penalty imposed under section 270A of the Act should also be set

aside to be decided upon by the AO after finalization of quantum assessment, if need so arose.

7. Per contra, the Ld. Sr. D.R. had no objection to the restoration of the appeals to the AO. However, he submitted that opportunity provided should be properly availed by the assessee and suitable direction may be given by this Tribunal in this regard.

8. We have heard both the parties and have also perused the material on record. Looking into the facts of this case, we are of the considered view that given the peculiar set of facts, the Assessee deserves one more opportunity to present his case before the Assessing Officer so as to enable him to substantiate his correct taxable income, because the AO, at the time of assessment, has treated all the credits as per Form No.26AS as income of the assessee without allowing any expenses. Accordingly, we restore the quantum appeal to the Office of the AO with a direction to provide one more opportunity to the assessee to present his case and thereafter complete the assessment in accordance with law. We also caution the Assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO 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.

9. Since we have restored the quantum appeal in ITA No.96/LKW/2024 to the AO, the penalty appeal in ITA No.97/LKW/2024 is also restored to AO with similar directions.

10. In the result, both the appeals of the Assessee stand allowed for statistical purposes.

Order pronounced in the open Court on 21/11/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:21/11/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order
Assistant Registrar