



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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.336/LKW/2024  
(Assessment Year: 2017-18)

<b>Rajiv Kumar</b> 17 Rajeev Traders, Tiraha Bajar, Powayan, Shahjahanpur- 242401.	v.	<b>ITO-1(5)</b> Aaykar Bhawan, NH-24, Bareilly mod, Shahjahanpur.
<b>PAN: AIVPG8841Q</b>		
(Appellant)		(Respondent)

Appellant by:	Ms. Shweta Mittal, C.A.
Respondent by:	Shri Sunil Kumar Rajwanshi, Addl. CIT(DR)

**ORDER**

**PER ANADEE NATH MISSHRA, A.M.:**

1. The present appeal has been filed by the assessee against the impugned appellate order dated 29.01.2024 order passed by the Ld. Addl. Joint Commissioner of Income Tax (Appeals)-1, Ludhiana [hereinafter “the Ld. JCIT(A)”] under section 250 of the Income Tax Act, 1961 (hereinafter “the Act”) wherein, the assessee’s appeal has been dismissed in limine for the reason of non compliance. The grounds of appeal of the assessee are as under: -

*“1. The Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order which is illegal, improper and against the principles of natural justice.*

*2 The Commissioner of Income Tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard.*

*3 The Commissioner of Income Tax (Appeal) has erred in law and on facts in confirming addition of Rs. 6,67,000/- u/s 69A of Income-tax Act, 1961. 4 The Commissioner of Income Tax (Appeal) has erred in law and on facts in confirming addition of Rs. 4,07,614/- being 8% of gross*

*receipts amounting to Rs 50,95,169/- as against net profit of Rs.2,49,152/- on actual turnover of Rs. 53,45,274/- declared in VAT return.*

*5 The Commissioner of Income Tax (Appeal) has erred in law and on facts in passing appellate order which is contrary to the facts and law.*

*6 The appellant craves leave to add, amend, alter or withdraw any grounds of appeal or raise any new ground appeal during the pendency of appeal.”*

1A. This appeal has been filed beyond time limit prescribed under section 253(3) of the Act. An application requesting for condonation of delay has been filed from the assessee's side. The Ld. Departmental Representative for Revenue expressed no objection to condonation of delay. Accordingly, delay in filing of this appeal is condoned and the appeal is admitted for decision on merits.

2. In this case, vide assessment order dated 19/11/2019 was passed by the Assessing Officer (“AO”), u/s 144 of the Act whereby the assessee's total income was assessed at Rs.10,74,614/-. In the aforesaid assessment order, an addition amounting to Rs.6,67,000/- was made u/s 69A of the Act, and a further addition of Rs.4,07,614/- was made as normal business income. The assessee's appeal against the aforesaid assessment order was dismissed by the Ld. CIT(A) vide impugned appellate order dated 29.01.2024. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 29.01.2024 of the Ld. CIT(A). At the time of hearing before us, the Ld. Authorized Representative (“AR”) for the Assessee submitted that the impugned order of the Ld. CIT(A) is not a speaking order on merits of the addition made. She further submitted that the assessee's appeal was dismissed in limine for want of prosecution without any discussion on the merits of the addition. She

submitted that the Ld. CIT(A) was duty bound under section 250(6) of Income Tax Act, to pass speaking order on merits of the issues in dispute. The Ld. AR for the Assessee also submitted that the Assessing Officer passed the aforesaid assessment order dated 19.11.2019 exparte qua the assessee without providing reasonable opportunity to the assessee. In view of these submissions, she stated that the issues in dispute regarding additions made in the assessment order should be restored back to the file of the Assessing Officer with the direction to pass fresh assessment order in accordance with law, after providing reasonable opportunity to the assessee. The Ld. Sr. Departmental Representative ("DR") was in an agreement with this request and expressed no objection to restoration of the matter to the file of the Assessing Officer.

3. On perusal of the impugned appellate order dated 29/01/2024 of the Ld. CIT(A), it is found that the Ld. CIT(A) dismissed the assessee's appeal for want of prosecution, taking adverse view of non-compliance with notices issued by the office of the Ld. CIT(A). However, the Ld. CIT(A) has statutory duty, prescribed u/s 250(6) of the Act to pass a speaking order on the merits of the case, whether or not there was any representation from the assessee's side. The order of the Ld. CIT(A) in disposing of the assessee's appeal, is required to be in writing, and the order is further required to contain the point for determination, the decision thereon and the reason for the decision. Thus, it is the statutory duty of the Ld. CIT(A) to pass a speaking order on merits of the case. The failure of the Ld. CIT(A) to ensure compliance with Section 250(6) of the Act, in both letter and spirit, was erroneous on his part. It can be readily inferred that

dismissing the assessee's appeal in limine, for want of prosecution, without going into the merits of the case was unjust and improper. Moreover, as the Assessing Officer failed to provide reasonable opportunity to the assessee before passing exparte assessment order under section 144 of the Act; and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present case before us; the impugned order of the Ld. CIT(A) dated 29/01/2024 is hereby set aside and issues in dispute regarding additions made in the assessment order are restored back to the file of the Assessing Officer with the direction to pass denovo assessment order, after providing reasonable opportunity to the assessee. All grounds of appeal are treated as disposed of in accordance with the aforesaid direction.

In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 29/11/2024.

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 29/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

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

//True Copy//

By order

Assistant Registrar