



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

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.632/LKW/2024
(Assessment Year: 2009-10)

Ashok Kumar Raja Awass Vikas Colony, Pilibhit- 262001.	v.	ITO-2(4) Pilibhit, U.P.
PAN:ALPPR2326G		
(Appellant)		(Respondent)

Appellant by:	Ms Shweta Mittal, CA
Respondent by:	Shri Sunil Kumar Rajwanshi, Addl. CIT(DR)
Date of hearing:	27 11 2024

ORDER

PER ANADEE NATH MISSHRA, A.M.:

1. The present appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals) [hereinafter "the Ld. CIT(A)"], Bareilly u/s 250(6) of the Income Tax Act, 1961 (hereinafter "the Act") dated 14/03/2019 for the assessment year 2009-10 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. That the Ld. AO and Ld. Appellant authority, are wrong in making addition on the ground of cash deposited in saving bank account.

2. That cash was not deposited in bank by a single entry. Cash was deposited on different dates in whole year and the same amount was withdrawn from bank on different dates.

3. That the appellant is a salaried military person posted as sub inspector in CRPF, made transactions in cash to purchase of agriculture implements and other necessities, out of his personal savings from salary and agriculture income. The appellant had deposited the cash and the same was withdrawn for agriculture purpose, so if we take the net transaction of cash then the appellant had withdrawn more than cash deposit.

4. That the Ld. AO considers only deposit of cash as unexplained investment but the fact is that cash was deposited as well as withdrawn for agriculture purpose.

5. That notices had been issued on several dates but the appellant was unable to reply those notices as the notices were issued on his temporary address and he was not aware of e-mail and portal.

6. That if the appellant had received an opportunity of being heard then he could explain the all facts.”

2. The appeal has been filed by the assessee beyond time limit prescribed under section 254(3) of the Income Tax Act, 1961 (hereinafter “the Act”). The assessee has filed an application seeking condonation of delay in filing of this appeal. The application for condonation of delay is supported by an affidavit of the assessee. The Ld. Sr. Departmental Representative for Revenue did not express any objection to the delay being condoned. In view of Section 254(3) of the Act, I condone the delay in filing of this appeal and I admit the appeal for decision of merits.

3. In this case, vide assessment order dated 28/10/2016, u/s 147/144 of the Act, the assessee’s total income was assessed at Rs.13,53,500/-. Further, the AO passed an exparte order thereby made an addition of Rs.13,53,500/- in respect of unexplained investment. The aforesaid assessment order was passed exparte qua the assessee against which the assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 14.03.2019, the Ld. CIT(A) dismissed assessee’s appeal. The impugned appellate order dated 14.03.2019 of the Ld. CIT(A) was also passed exparte qua the appellant assessee. The present appeal has been filed by the assessee in Income Tax Appellate Tribunal (ITAT) against the aforesaid impugned appellate order dated 14.03.2019 of the Ld. CIT(A).

4. At the time of hearing before us, the Assessee was represented by Ms. Shweta Mittal, Ld. Authorized Representative ("AR") and Revenue was represented by Shri. Sunil Kumar Rajwanshi, Ld. Departmental Representative ("DR). The Ld. Counsel for the Assessee submitted that the Ld. CIT(A) has not passed 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 issue in dispute should be restored back to the file of the Ld. CIT(A) with a direction to pass a speaking order on merits of the case after providing reasonable opportunity to the assessee. The Ld. CIT-DR for Revenue expressed no objection to this.

5. I have heard both sides. I have perused the materials available on records. On perusal of the impugned appellate order dated 14/03/2019 of the Ld. CIT(A), I find 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. 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 erroneous on the part of the

Ld. CIT(A) having regard to provisions contained under section 250(6) of the Act.

6. In view of the foregoing, and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present case before us; I set aside the impugned order of the Ld. CIT(A) dated 14/03/2019 and I direct the Ld. CIT(A) to pass denovo order in accordance with law, after providing reasonable opportunity to the assessee and with due regard for Section 250(6) of the Act. All grounds of appeal are treated as disposed of in accordance with the aforesaid direction.

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

Order pronounced in the open Court on 28/11/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 28/11/2024

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