



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

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

ITA No.525/LKW/2024  
(Assessment Year: 2017-18)

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| <b>Vivek Kumar Gupta</b><br>Kanakpur Maya Bazar,<br>Faizabad-224001. | v. | <b>The Income Tax Officer</b><br><b>Ward-1,</b><br>Faizabad. |
| <b>PAN:BCUPK1710N</b>  |    |  |
| (Appellant)  |    | (Respondent)   |

|                  |                            |
|------------------|----------------------------|
| Appellant by:    | None                       |
| Respondent by:   | Dr. Preeti Singh, JCIT(DR) |
| Date of hearing: | 09   12   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)"/National Faceless Appeal Centre (NFAC) u/s 250 of the Income Tax Act, 1961 (hereinafter "the Act") dated 16/08/2024 for the assessment year 2017-18 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: -

*"01. THAT the CIT(A)/NFAC has upheld the addition of Rs.5,89,500/- made by the AO u/s.14A(3) of the Act, which addition is contrary to fact bad in law, be deleted.*

*02. THAT the CIT(A)/NFAC has failed to consider the explanation furnished in support of the payment made to dealers, the AO as well as CIT(A) was not justified in rejecting the explanation and making the addition of Rs.5,89,500/- u/s.14A(3) of the Act, which addition are liable to be deleted.*

*03. THAT the CIT(A)/NFAC has failed to consider that the Valuation Report submitted by the assessee is only assessee's partition i.e. 147.54 sq.mtr., whereas the CIT(A)/NFAC has treated the entire cost of constructions Rs.14,75,800/- which divided into 4 shares and allow 1/4th share Rs.3,99,950/- only, which action of the CIT(A)/NFAC is arbitrary, bad in law.*

*04. That the CIT(A)/NFAC has failed to consider that the section 14A(3) is not applicable in this case and liable to be deleted.*

*05. That the appellant craves leaves to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

2. In this case, vide assessment order dated 13/04/2023, under section 147 read with section 144B of the Act, the assessee's total income was determined at Rs.8,38,450/-. In the aforesaid assessment order an addition of Rs.5,89,500/- was made by the AO under section 40A(3) of the Act out of expenses claimed by the assessee. The assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 16.08.2024, the Ld. CIT(A) dismissed assessee's appeal. The impugned appellate order dated 16.08.2024 of the Ld. CIT(A) was passed ex parte 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 16.08.2024 of the Ld. CIT(A). At the time of hearing before us, the Assessee was represented by none and Revenue was represented by Dr. Preeti Singh, Departmental Representative for Revenue. On perusal of the impugned appellate order dated 16.08.2024, it is found that the Ld. CIT(A) has not decided the assessee's appeal on merits. Ld. CIT(A) did not pass a speaking order on the merits of the grounds of appeal. He dismissed the assessee's appeal in a summary manner, taking adverse view of non-compliance on the part of the assessee to the notices dated 12.07.2024, 25.07.2024 & 05.08.2024 issued by the office of the Ld. CIT(A).

3. In the absence of any representation from the assessee's side, the Ld. Departmental Representative for Revenue. On perusal of the impugned appellate order dated 16/08/2024 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. 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. The Ld. Departmental Representative was of the opinion, at the time of hearing that the issues in dispute may be restored to the file of the Ld. CIT(A) with the direction to pass denovo order on merits.

4. In view of the foregoing, and as Departmental Representatives for Revenue is in agreement with this, in the specific facts and circumstances of the present; the impugned order of the Ld. CIT(A) dated 16/08/2024 is set aside and the Ld. CIT(A) is directed 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.

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

Order pronounced in the open Court on 10/12/2024.

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 10/12/2024

Copy forwarded to:

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

//True Copy//

By order

Assistant Registrar