

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.1169/दिल्ली/2024 (नि.व. 2012-13)

ITA No.1169/DEL/2024 (A.Y.2012-13)

Noor Ullah Zargar,
32/17, Indl. FL., Old Rajinder Nagar,
New Delhi 110060

PAN: AAHPZ-8882-A

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer,
Ward-50(3), New Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Uma Upadhyay, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Tiwari, Sr. DR

सुनवाई की तिथि/ Date of hearing : 09/12/2024

घोषणा की तिथि/ Date of pronouncement: : 09/12/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against an ex-parte order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 17.01.2024, for assessment year 2012-13.

2. Ms. Uma Upadhyay, appearing on behalf of the assessee submits that appeal was filed before the CIT(A) on 14.02.2020 against assessment order dated 30.11.2019 passed u/s. 144 r.w.s 147 of the Income Tax Act, 1961(hereinafter referred to as 'the Act'). She submitted that the assessee was not aware of the assessment order as the said assessment order was neither uploaded on the official website of the Department nor the same was communicated to the assessee. To substantiate her submission, she furnished a copy of screenshot from e-filing portal

of the Department. The assessee vide application dated 15.01.2020 applied for certified copy of the assessment order for AY 2012-13 (copy of application at page no. 88 of the paper book), immediately thereafter on receipt of certified copy of the assessment order, the assessee filed appeal before the CIT(A). She further submitted that during assessment proceedings in response to notice u/s. 148 of the Act, the assessee filed reply on 02.05.2019. In response to notice u/s. 142(1) of the Act, the assessee filed reply on 12.11.2019, 22.11.2019 and 25.11.2019. The assessee made further submissions on 26.11.2019 and 27.11.2019. The Assessing Officer (AO) without taking note of submissions and documents furnished by assessee passed the assessment order. She further stated that even in First Appellate proceedings the assessee in response to notice dated 10.11.2023 filed reply on 16.11.2023. To substantiate her contentions she placed on record copy of acknowledgment indicating reply filed by assessee during assessment proceedings and at the time of first appellate proceedings. Thus, it is not a case where assessee was non compliant.

3. Per contra, Rajesh Tiwari representing the department submitted that the assessee failed to respond to the notices issued by the CIT(A). In absence of any reply from the assessee, the CIT(A) was constrained to pass the impugned order on the basis of documents/material available on record. Even before the AO, the assessee failed to respond to the notices issued u/s. 142(1) of the Act and 143(2) of the Act. The AO was constrained to complete assessment u/s. 144 of the Act. The Id. DR prayed for dismissing appeal of the assessee.

4. Both sides heard, orders of the authorities below examined. A perusal of the impugned order reveals that the CIT(A) had issued three notices to the assessee. In response to first notice dated 30.01.2021, the assessee sought time to file

submissions, the second notice was issued on 08.08.2023, there was no response to said notice from the assessee's side. The last notice was issued by CIT(A) on 10.11.2023. The assessee filed replies to said notice. The CIT(A) without considering reply of the assessee proceeded on to pass the impugned order. The assessee had furnished reply to one of the three notices, hence, it cannot be said that there was no response to the statutory notice by the assessee. The impugned order was passed by the CIT(A), without considering submissions of the assessee.

5. Taking into consideration entire facts of the case, I deem it appropriate to restore this appeal back to the CIT(A) for *denovo* adjudication, after considering facts of the case and submissions of the assessee, in accordance with law.

6. The assessee is directed to respond to the notice(s) served by the CIT(A), without fail.

7. In the result, appeal of the assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Monday the 09th day of December, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 09/12/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI