

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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.223/Lkw/2024
Assessment Year:2017-18

Pinki Mishra, P-2/164/10, HPO Hawabganj, Barabanki. PAN:ALOPM3868P (Appellant)	Vs.	Income Tax Officer-5(5), Barabanki. (Respondent)
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Appellant by	Ms. Sweety Kothari, Advocate
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)
Date of hearing	17/12/2024
Date of Pronouncement	26/12/2024

ORDER

PER SUBHASH MALGURIA, J.M.

1. This appeal vide I.T.A. No.223/Lkw/2024 has been filed by the assessee for assessment year 2017-18 against impugned appellate order dated 09/02/2024 (DIN & Order No.ITBA/NFAC/S/250/2023-

24/1060737152(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. In this appeal the assessee has raised the following grounds:

- "1. The CIT (Appeals) erred in law and on facts in dismissing the appeal of the appellant in limine and in passing the impugned ex-parte order in gross violation of principles of natural justice on the alleged ground that the appellant was not interested to prosecute the appeal without adjudicating on the merits of the grounds of appeal raised by the appellant. Thus, the matter should be remanded back to the CIT(A) in view of the decision of the Hon'ble ITAT in the case of DSI-Bridgecon India (P) Ltd. [2024] 158 taxmann.com 185 (Delhi-Trib.) with a direction to decide on merits.*
- 2. The assessing officer erred in law and on facts in making addition of Rs.99,80,6307- on account of cash and other deposits made in the bank account of the assessee ignoring the facts and circumstances of the case. Thus, the addition so made on should be deleted."*

2. The facts of the case, in brief, are that the assessee is an individual and is working with Option One Trade and Mercantile Pvt. Ltd. and LUCG Company for collecting RD and FD payments from customers on behalf of company. During demonetization period the assessee had deposited cash of Rs.16,39,900/- in his bank account maintained with the State Bank of India, Barabanki. Notice under section 142(1) of the I. T. Act was issued on 23/01/2018 and the assessee was required to furnish return of income but the assessee failed to furnish return of income, therefore, the source of cash deposits in bank account remained unexplained. Subsequently, another notice u/s. 142(1) of the I.T. Act was issued on 29/09/2019 requesting assessee to furnish various details regarding his income. In response, no written submission, details / documents were furnished by

the assessee. Finally a show cause notice under section 144 of the I.T. Act dated 17/09/2019 was issued through ITBA portal. But in response no compliance has been made by the assessee. During the demonetization period, the assessee had deposited total amount of Rs.99,80,628/- in his bank account maintained with State Bank of India during financial year 2016-17 relevant to assessment year 2017-18. Since the assessee had not filed her return of income and no written submission, details / documents were furnished by the assessee, the Assessing Officer completed the assessment u/s 144 of the I. T. Act and assessed the total income of the assessee at Rs.99,80,630/-. Aggrieved, the assessee carried the matter in appeal before the learned CIT(A) against the aforesaid assessment order. Vide impugned appellate order dated 09/02/2024 of learned CIT(A), the assessee's appeal was dismissed ex-parte qua the assessee. While dismissing the assessee's appeal, the learned CIT(A) observed that the assessee was issued various notices giving opportunities of being heard to the assessee, which were duly served upon the assessee through registered mail but the assessee chose not to file any written submissions / documents and evidences. The learned CIT(A) went on to dismiss the assessee's appeal stating that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made before the tax authorities lies with the assessee and in the present case the assessee has not been able to discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made and it seems that the assessee is not serious to pursue its appeal.

(C) Aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal against the aforesaid impugned appellate order of learned CIT(A). In the course of appellate proceedings in ITAT learned A.R. for the assessee submitted that the Assessing Officer as well as learned CIT(A) have passed ex-parte order and without affording sufficient time and opportunity to the assessee. The learned AR for the assessee further submitted that the learned CIT(A) failed to pass a speaking order on merits and dismissed the assessee's appeal in a summary manner in violation of the provisions u/s 250(6) of the Act. He further submitted that the learned CIT(A) is duty bound u/s 250(6) of the IT Act to pass a speaking order on various grounds of appeal, on merits, but learned CIT(A) failed to do so. In view of the foregoing, learned AR for the assessee submitted, the impugned order of learned CIT(A) should be set aside and the issue in dispute should be restored to the file of Assessing Officer with the direction to pass fresh order in accordance with law after providing reasonable opportunity to the assessee.

(C.1) The learned Sr. D.R. for the Revenue left the matter to the discretion of the Bench.

(D) We have heard the rival parties and have gone through the material placed on record. From the record, it is evident that the Assessing Officer and learned CIT(A) have issued various notices to the assessee to pursue its case but no response was received from the assessee. Ultimately, the Assessing Officer completed the assessment u/s 144 of the I. T. Act and learned CIT(A) also passed ex-parte order but not on merits. However, in the interest of justice and in view of the submissions

made by the Learned A. R. for the assessee, we deem it fit that one more opportunity should be given to assessee to pursue its case before the Assessing Officer. In view of the foregoing, we set aside the impugned appellate order dated 09/02/2024 and remand the matter back to the file of the Assessing Officer with the direction to pass de novo assessment order in accordance with law after providing reasonable opportunity of being heard to the assessee.

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

(Order pronounced in the open court on 26/12/2024)

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Dated:26/12/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT

4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar