

**IN THE INCOME TAX APPELLATE TRIBUNAL
'DB', AGRA BENCH, AGRA**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No. 172/Agr/2022
(Assessment Year 2012-13)**

Shri Abhishek Gupta 405, Anupam Omerean Heights, Mughal Road, Kamla Nagar, Agra-282005 Uttar Pradesh	v.	The Income Tax Officer Ward 2(2)(1), Firozabad, U.P.
स्थायीलेखासं. / जीआइआरसं. / PAN / GIR No: AEFPG0755D		
Appellant	..	Respondent

Appellant by :	Written adj. application rejected
Respondent by :	Sh. Shailendra Srivastava, Sr. DR

Date of Hearing	23.01.2025
Date of Pronouncement	14.02.2025

ORDER

PER RAMIT KOCHAR, AM:

This appeal in ITA No. 172/Agr/2022 filed by the assessee for the Assessment Year 2012-13 has arisen from the appellate order dated 25.09.2021 (DIN & Order No. ITBA/NFAC/S/250/2021-22/1035891232(1))passed by the Ld. Commissioner of Income Tax,

NFAC, Delhi, which appeal before learned CIT(A) in turn has arisen from assessment order dated 20.12.2019 passed by the AO under Section 143(3) read with Section 147 of the Income-tax Act, 1961.

2. The Grounds of Appeal raised by the assessee in Memo of Appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, reads as under:

- “01. Because the assessee company denies its liability from being assessed on a total income of Rs. 6,39,510/- and to pay tax and interest thereon.
02. Because the Ld. Commissioner of Income Tax- Appeals, National Faceless Appeal Centre has erred in law and on facts in confirming addition of Rs.1,50,000/- on account of gift received from the assessee's sister without considering the material evidences placed on record by the assessee.
03. Because the authorities below have failed to appreciate that the transaction of gift was genuine and identity and credit worthiness of the done is fully explained and no such addition was called for.
04. Because the addition has been made without application of mind and without giving the assessee a reasonable opportunity of being heard and the same is in violation of principles of natural justice.

Any other relief or reliefs deemed fit in the facts and circumstances of the case may be granted. The appellant craves leave to add, alter or vary the ground(s) of appeal before or at the time of hearing.”

3. At the outset, it is observed that this appeal is filed belatedly by the assessee by 331 days beyond the time stipulated under Section 253(3) of the Income Tax Act 1961 with Income Tax Appellate Tribunal, Agra Bench, Agra. The assessee has filed an application supported with the affidavit praying for condonation of delay in filing this appeal belatedly with ITAT by 331 days beyond the time stipulated u/s 253(3). The assessee has submitted that assessee was seriously ill for long period of time, and also there was change in the counsel. It was submitted that because of illness, the assessee could not file its appeal in time. None appeared when this appeal was called for hearing before the Bench. The

written adjournment application is filed by the assessee which is rejected by the Bench. The Id. Sr. DR could not controvert the averments made by the assessee in his application supported by affidavit praying for condonation of delay in filing this appeal belatedly. It is observed by the Bench that the date of order of the CIT(A) is 23.09.2021 which was period covered by the pandemic Covid-19. However, this appeal was filed on 21.10.2022 which was filed beyond the period of limitation prescribed u/s 253(3). There was an extension of limitation granted by the Hon'ble Supreme Court in the case of Cognizance for Extension of Limitation (Suo Motu Writ Petition (Civil) No. 03 of 2020) March 08. 2021, wherein Hon'ble Supreme Court held that period from 15.03.2020 to 28.02.2022 shall be excluded for the purpose of computing period of limitation. We have observed that the assessee has filed appeal on 21.10.2022, which is even beyond the period of extension of limitation by Hon'ble Supreme Court. The assessee has shown reasonable and sufficient cause in filing this appeal belatedly. The assessee is not likely to gain by filing this appeal belatedly. When the technicalities are pitted against advancement of substantial justice, Courts will lean towards advancement of substantial justice, unless malafide is at writ large. We do not find any malafide on the part of the assessee in filing this appeal belatedly with ITAT. The assessee is not likely to gain anything by filing this appeal belatedly with ITAT. Therefore, in the interest of justice, We condone the delay of 331 days in filing this appeal belatedly beyond the time prescribed u/s 253(3) by the assessee, and proceed to adjudicate the appeals on merits. Reference is drawn to judgment and order of Hon'ble Apex Court in the case of Collector, Land Acquisition, Anantnag v. Mst. Katijee & Ors. (1987) 167 ITR 471(SC)

4. Brief facts of the case are that the department in possession of STR information/documents that the assessee made cash deposit amounting to Rs.82,02,900/- in his bank account maintained with Oriental Bank of Commerce, Agra Gate, Firozabad ,during financial year 2011-12. The AO issued letter dated 22.03.2019 for verification of deposits and filing of return of income , the assessee neither appeared before the AO nor filed any adjournment.The AO recorded reasons for reopening of the concluded assessment by invoking provisions of Section 147 of the Act, after obtaining necessary approval from the competent authority.Notice under Section 148 of the Act was issued by the AO to the assessee on 31.03.2019 . Copy of reasons recorded by the AO were also provided to the assessee. Statutory notices u/s 142(1) , 143(2) and 144 were issued by the AO from time to time during reassessment proceedings. In the meantime , the AO obtained bank statement of the assessee from Oriental Bank of Commerce, Agra Gate, Firozabad. The assessee participated in the assessment proceedings. From the perusal of the reply, the AO observed that assessee has received gift amounting to Rs.1,50,000/- from his sister Sony Gupta. The AO in order to verify creditworthiness and genuineness of the said gift , issued notice under Section 142(1) dated 16.12.2019 to the assessee asking the assessee to produce Sony Gupta along with original copy of gift deed, copy of ITR, copy of bank account maintained with Oriental Bank of Commerce, but neither Sony Gupta nor the assessee appeared before the AO, nor filed any application for adjournment. Hence, the AO observed that assessee could not substantiate the genuineness and creditworthiness of the said gift ,which led to the addition to the income of the assessee to the tune of Rs.1,50,000/-.

5. Aggrieved, the assessee filed first appeal before the Ld. CIT(A). The Ld. CIT(A) issued as many as 3 notices to assessee, but no compliance was made on behalf of the assessee. Hence, the CIT(A) dismissed the appeal of the assessee affirming the assessment order passed by the AO, as the assessee failed to avail opportunity provided by the learned CIT(A), and failed to file evidence to rebut the findings of the AO.

6. Aggrieved, the assessee filed second appeal before the Tribunal. None appeared when this appeal was called for hearing before the Division Bench. The ld. Sr. DR fairly submitted that the matter can be set aside and restored back to the file of ld. CIT(A) for denovo adjudication of the appeal of the assessee.

7. We have heard leaned Sr. DR and perused the material on records. At the outset, it is observed that Ld. CIT(A) passed an ex-parte order in limine without deciding the issues arising in the appeal on merits. We draw reference to provision of Section 250(6) wherein the ld. CIT(A) is required to specify point of determination ,decision therein and the reasoning thereof . The learned CIT(A) has not dealt with the issue on merit and simply dismissed the appeal of the assessee on the ground that no compliance was made by the assessee. The assessee has claimed in statement of fact/grounds of appeal filed with learned CIT(A) in Form No. 35 that the assessee received gift of Rs. 1,50,000/- from her sister Sony Gupta through banking channel, and even gift deed was claimed to have been filed by the assessee with the AO ,but the same was not considered by the AO. The ld. CIT(A) did not called for assessment record nor made any enquiry/verification in the matter nor remand report was called by ld. CIT(A) from the AO. No doubt the assessee also did not comply with the notices issued by ld. CIT(A) and the assessee is equally

responsible for its woes. The claims and contentions of the assessee need verification and investigations of facts. Proceedings before Id. CIT(A) are extension of assessment. The powers of Id. CIT(A) are co-terminus with powers of the AO, which includes power of enhancement also. In the instant case, the learned CIT(Appeals) has passed an ex parte order in limine without deciding the issues arising in appeal on merits, which is not in consonance with provisions of Section 250(6). Even, Id. CIT(Appeals) has not made any enquiry before dismissing the appeal of the assessee, as contemplated u/s. 250(4) of the Act, and the appeal of the assessee was dismissed by Id. CIT(A) in limine ex-parte for non-prosecution, and without deciding the issues arising in the appeal on merits. The Id. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as Id CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The Id. CIT(A) has to state points for determination, his decision and reasoning for the said decision, in the appellate order which is to be passed in writing by Id. CIT(A). The appellate order passed by Id. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of Id. CIT(A) in deciding the issues. If the Id. CIT(A) simply dismiss the appeal merely because the assessee did not

comply with the notices issued by Id. CIT(A) *in limine* without adjudicating issues arising in the appeal on merits, such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6), and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits. The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating that the assessment order passed by AO is upheld, and that the assessee has not submitted details/documents is not sufficient. The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO., which even includes power of enhancement. It is equally true that the assessee also did not complied with the notices issued by Id. CIT(A) , and did not file the requisite details/documents to support his contentions. Thus, the assessee is equally responsible for its woes. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) is set aside and the matter can go back to the file of Id. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. We direct the assessee to comply with the notices issues by Id. CIT(A) , otherwise Id. CIT(A) shall be free to pass the appellate order on merits in accordance with provisions of Section 250(6). We clarify that we have not commented on the merits of the issues in the appeal. Accordingly, this appeal of the assessee in ITA No. 172/Agr/2022 for assessment year 2012-13, stands allowed for statistical purposes. We order accordingly.

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

Order pronounced in the open court on 14.02.2025

Sd/-
(Sudhir Kumar)
JUDICIAL MEMBER

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Dated 14.02.2025

PS: Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT AGRA