

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGARAO, JUDICIAL MEMBER AND
SHRIK.M. ROY, ACCOUNTANT, MEMBER

ITA no.340/Nag./2024
(Assessment Year : 2017-18)

Shri Laxmi Shankari Pat
Sanstha Maryadit Nagpur
Block no.29, Ward no.49
Rajat Sankul, Opp. S.T. Bus Stand
Ganeshpeth, Nagpur 440 012
PAN – AABAP7777K

..... Appellant

v/s

Income Tax Officer
Ward-4(4), Nagpur

..... Respondent

Assessee by : Ms. Himani Shivhare
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/03/2025

Date of Order – 21/03/2025

ORDER

PER V. DURGA RAO, J.M.

The instant appeal by the assessee is emanating from the impugned order dated 20/07/2022, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. During the course of hearing, the Registry has pointed out that there is a delay of 647 days in filing the instant appeal by the assessee. The assessee has filed a duly sworn affidavit explaining cause of delay to be serious multiple illness of the health of the President of the assessee trust. Keeping

this in view, we condone the delay of 647 days in filing the appeal before us and proceed to dispose off this appeal on merit.

3. During the course of hearing, while going through the material available before us, we find that the assessee neither filed its return of income nor appeared before the Assessing Officer. The observations of the Assessing Officer while rejecting the claim of the assessee are as under:-

"06. As per the information received from the Gandhibagh Sahakari Bank, Nagpur, the assessee has deposited SBN of Rs.52,25,500/- from 10/11/2016 to 11/11/2016. Considering the fact that assessee has accepted the SBN after 08/11/2016 of Rs.52,25,500/-, which was not allowed and also not filed the return of income for the year under consideration, the amount accepted in SBN is added back to the total income as unexplained u/s 69A of the I.T. Act, 1961 and separate penalty proceedings, u/s 271AAC are initiated.

07. As per the audit reported (signed by auditor of society), the profit for the year under consideration was shown at Rs.4,937/-. As no return of income is filed for A.Y. 2017-18, the profit of Rs.4,937/- is treated as normal business income and no deduction u/s 80P is allowed as the deduction is only allowed if the same is claimed by filing the return of income. The assessee has not filed any return of income till the year under consideration on the given PAN.

4. On appeal, even before the learned CIT(A) also, during the first appellate proceedings, despite issuance of statutory notices, the assessee chose not appear in the proceedings. The learned CIT(A) dismissed the assessee's appeal ex-parte by holding as under:-

"4.

I have carefully gone through, the material available on record as well as the finding of AO in as per assessment order. Despite the fact that the appellant was given several opportunities during this proceeding to furnish submission/reply but it seen from record that appellant did not furnish any reply or evidence in support of the claim made by him. The finding of AO is well elaborated in para no. 2 to 7 of the assessment order. I do not find any reason to interfere with the finding/ analysis of the AO. Thus, the addition made by AO is hereby confirmed. These grounds are decided in negative and against the appellant."

5. Before us, during the course of hearing, learned Authorised Representative, Ms. Himani Shivhare, appearing for the assessee, admitting the lapse on the part of the assessee for not responding to the explanation sought by the authorities below. However, she pleaded that if this Bench grants the assessee one opportunity by restoring this appeal to the file of the Assessing Officer, so that the assessee is able to substantiate its case before the Assessing Officer. Therefore, she prayed that the appeal be restored to the file of the Assessing Officer.

6. On the other hand, the learned D.R., Shri Abhay Y. Marathe, for the Revenue submitted that despite the learned CIT(A) provided sufficient opportunities to the assessee, however, the assessee did not appear before the learned CIT(A) and not furnished relevant details. He strongly supported the orders passed by the learned CIT(A).

7. We have heard both the learned Counsel appearing for the parties, perused the materials available on record and gone through orders of the authorities below. We find that though the authorities below have granted several opportunities to the assessee to substantiate its case, ultimately, the orders passed by both the authorities below were ex-parte orders. Therefore, we are of the opinion that by following the principles of natural justice, one opportunity should be given to the assessee to substantiate the case before the Assessing Officer. In view of the above, the impugned order passed by the learned CIT(A) is set aside and remit the back matter to the file of the Assessing Officer and direct him to adjudicate the matter afresh on merit and in accordance with law after providing reasonable opportunity of being heard

to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason and adhere to the directions of the learned CIT(A) promptly. Accordingly, the appeal is hereby restored to the file of the Assessing Officer for statistical purposes.

8. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur