IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.338/Pat/2024
Assessment Year: 2017-18

Jivachh Yadav……Appellant
P.O & P.S Chandrayan,
Nawhatta, Bihar-852201.
[PAN: AHFPY6939A]

vs.

CIT(Appeal), NFAC, Delhi……..... Respondent

Appearances by:
Shri Pankaj Kumar, CA appeared on behalf of the appellant.
Shri Ashwani Kumar, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 28, 2025
Date of pronouncing the order : January 30, 2025

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.09.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the Registry has informed that there is a delay of 116 days in filing the present appeal. The ld. AR of the assessee filed an application for condonation of delay stating reasons for such delay. After considering the application, we find reasonable cause for such delay. We, therefore, condone the delay in filing the appeal and adjudicate the appeal on merits of the case.

3. Brief facts of the care are that the assessee is an individual and is engaged in retail business of fertilizer and seeds. The case of the assessee was reopened u/s 147 of the Act for the relevant assessment

year by issuing notice u/s 148 of the Act. In response, the assessee filed his return of income on 05.06.2019. Subsequently, the Assessing Officer issued notices u/s 143(2) and 142(1) of the Act thereon. However, the assessee did not respond to the notices issued by the Assessing Officer. Therefore, the Assessing Officer on the basis of materials available with him found that the assessee made cash payments of Rs.37,61,716/- to M/s M/s Ugramaya Enterprises for purchase of fertilizer which were exceeding Rs.20,000/- prescribed limit under the provisions of section 40A(3) of the Act. Additionally, the Assessing Officer observed that the assessee deposited cash in bank account of Rs.5,50,000/- which was not properly explained and treated the amount as unexplained income u/s 69A of the Act during the demonetization period. The Assessing Officer added both the amounts back to the total income of the assessee by assessing total income of the assessee at Rs.4311720/-.

4. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A). Despite receiving three consecutive notices, the assessee failed to appear or present his case. The appeal of the assessee was dismissed due to non-prosecution by simply upholding the order of the Assessing Officer.

5. Aggrieved, the assessee filed an appeal before this Tribunal raising various grounds. However, the primary contention of the assessee is that the order passed by the ld. CIT(A) was ex parte order without providing proper opportunity to the assessee to present his case. The ld. AR, therefore, requested before the Tribunal to provide another opportunity to substantiate his claim and has assured full compliance to the notices that will be issued by the authorities below.

6. On the other hand, the ld. DR did not oppose the prayer of the assessee and relied on the orders of the authorities below.

7. We, after hearing both the parties and reviewing the materials available on record, find that the order of the ld. CIT(A) is ex parte order denying the adequate opportunity to present the case by the assessee. We note that the ld. CIT(A) dismissed the appeal of the assessee without going into merits and decided only on the ground of non-compliance on the part of the assessee. We, therefore, find that the dismissal of appeal solely on the procedural ground without examining the merits of the case which is essential u/s 250(6) of the Act, is not justified. In the interest of justice and fair play, we deem it fit to provide the assessee one more opportunity to substantiate his case to ensure just and fair assessment. We, therefore, remand back the issue to the file of the ld. CIT(A) with a direction to re-examine the case on merits after giving reasonable opportunity of being heard to the assessee to represent his case. We also direct the assessee to diligently comply with the notices issued and promptly participate in the remand proceedings without any further delay.

8. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 30th January, 2025.

Sd/-	Sd/-
[Rakesh Mishra]	**[Sonjoy Sarma]**
लेखा सदस्य/**Accountant Member**	न्यायिक सदस्य/**Judicial Member**

Dated: 30.01.2025.
RS

Copy of the order forwarded to:
1. Jivachh Yadav
2. CIT(Appeal), NFAC, Delhi
3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches