

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.265/Del./2020  
(ASSESSMENT YEAR : 2016-17)**

Experience Fab Pvt. Ltd.,  
T-1, 3<sup>rd</sup> Floor, Opp. Block 26,  
West Patel Nagar,  
New Delhi – 110 008.

vs. ITO, Ward 8 (4),  
New Delhi.

**(PAN : AADCE5437H)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : None  
REVENUE BY : Shri Rajendra Jha, Sr. DR

Date of Hearing : 07.11.2022  
Date of Order : 09.11.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id.

CIT (Appeals)-3, New Delhi for the assessment year 2016-17.

2. The grounds of appeal read as under :-

“1. Because the Ld. A.O., on the fact of the case and as per the law, has erred in passing the assessment order as that assessment order is devoid of correct facts, illegal and without authority of law.

2. Because the Ld. A.O, on the fact of the case and as per the law, has erred in assuming the jurisdiction u/s 143(3)

therefore, the assessment proceeding is nullity and liable to be crumbled down.

3. Because the Ld. A.O as well as CIT, on the fact of the case and as per the law, has failed to appreciate the fact that the Bank Account Number 0743010100000106 with Jammu & Kashmir Bank mentioned in the show cause notice dated 15.12.2018, was not pertaining to the assessee and moreover, the Ld. A.O. has not provided the copy of Bank Statement that was procured by him from the bank u/s 133(6) therefore, denying the opportunity of rebuttal and accordingly deprived the opportunity from the assessee of natural justice.

4. Because the Ld. A.O, on the fact of the case and as per the law, has failed to appreciate the distinction between figures appearing in Bank Statement vis-a-vis books of accounts as the former is on the receipt basis and later on accrual basis.

5. Because the Ld. A.O as well as Ld. CIT, on the fact of the case and as per the law, has failed to appreciate that section 68 cannot be invoked when there is receipt as per 26AS as source is already explained.

6. The Appellant carves the leave to add, alter or modify any grounds of law during the course of hearing.

Prayer :

In view of the above submission, we humbly requests to:

- (a) Set aside or quash the order passed by the Ld. CIT (A)-3 vide the order dated November 11, 2019 u/s 250; or
- (b) Pass any other order as the Hon'ble may deem fit."

3. Brief facts of the case are that the assessee had filed the ITR on 17.10.2016 showing total income of Rs.50,000/- and total receipts of business at Rs.1,01,00,000/-. The assessee revised the ITR on 27.10.2016 showing total income of Rs.50,000/- and total receipts of business at

Rs.1,01,00,000/ -. The assessee again revised the ITR on 21.12.2016 showing total income of Rs.17,06,070/- and total receipts of business at Rs.1,81,15,798/-. The case was selected for limited scrutiny in order to verify whether the assessee has shown contract receipts correctly. During the course of assessment proceedings, the AO observed that in Form 26AS, the total receipts have been shown at Rs.2,23,20,296/- on which TDS u/s 194C, 194J & 194IA of the Act has been deducted and the assessee has shown gross receipt of Rs.1,81,15,798/- in the latest revised return. The AO further observed that the assessee is having two bank accounts and the total receipts in the two accounts amount to Rs.2,54,75,206.36/-. The AO asked the appellant repeatedly to reconcile the figures. Proper response was not submitted. It was only explained that the total receipts include advance of Rs.38,98,300/- which is not included in the gross receipts. As the assessee could not reconcile the total receipts in the two bank accounts with the gross receipts shown in P&L account, the AO has made an addition of Rs.34,61,108/-.

4. Before the Id. CIT (A), the assessee has made following submissions :-

"This is in reference to the appeal against the order u/s 143(3) dated 19/12/2018 in which addition of Rs.34,61,108.36/- has been made u/s 68 of the Income Tax Act, 1961 stating that the difference in amount offered for tax and amount declared in ITR. In this I would like to submit that the difference stated in the order is due to the contra transaction between J&K Bank

and Kotak Mahindra Bank of the Experience Fab Private Limited, working, of contra transaction along with bank account statement of the banks marking the transaction has been attached.

It is apparent from the documents that the addition made by the learned A.O. is not correct. So, I request you to please drop the addition made and pass the order as per the income declared in the Income Tax Return of the assessee.

I hope the above evidences would suffice you."

5. However, ld. CIT (A) was not satisfied. He upheld the order of AO by observing that assessee has failed to provide supporting documents and ledger accounts and the order of ld. CIT (A) reads as under :-

"I have considered the facts of the case, It has been contended that the difference in gross receipts is on account of contra transactions between the two bank accounts. However, it is observed that the appellant has failed to furnish the supporting documents in the form of ledger accounts, bank book, reconciliation statement etc. in order to reconcile the figures. As the total receipts in the bank accounts have not been reconciled with the gross receipts shown in P&L account, the addition made by the AO is upheld and the grounds of appeal are dismissed."

6. Against this order, assessee is in appeal before us. We have heard ld. DR for the Revenue and perused the records. None appeared on behalf of the assessee despite notices. Notices sent have returned unserved. Hence, we proceeded to decide the appeal after hearing the ld. DR for the Revenue and perusing the records.

7. One of the grounds raised by the assessee is that the copy of bank statement obtained from the bank which the AO wanted the assessee to reconcile was not given to the assessee. Furthermore, the assessee had stated before the Id. CIT (A) that the difference has arisen because of contra-transactions in the bank statement and assessee has also stated in the submissions that the necessary marking of the entries have been attached. But, on the other hand, Id. CIT (A) is giving a contrary finding after noting the above submission that no details have been submitted.

8. In our considered view, on the facts and circumstances of the case, interest of justice will be served if the issue is remanded to the file of AO. AO is directed to consider the issue afresh after providing the assessee the bank statements procured by the AO from the bank u/s 133(6) of the Income-tax Act, 1961 (for short 'the Act') and also providing an opportunity of being heard. The assessee is also directed to cooperate before the authorities below.

9. In the result, the appeal of the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on this 9<sup>th</sup> day of November, 2022.**

**Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 9<sup>th</sup> day of November, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.