

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1637/Del./2022
(ASSESSMENT YEAR : 2016-17)**

NYR Creations Private Limited,
327, Near Shani Bajar Road,
Shiv Kunj, Jharoda,
New Delhi – 110 072.

vs. ITO, Ward 18 (4),
New Delhi.

(PAN : AACCN3969J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Supriya Mehta, CA
Ms. Uma Upadhyay, CA
REVENUE BY : Shri S.L. Anuragi, Sr. DR

Date of Hearing : 20.03.2023
Date of Order : 23.03.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 08.07.2022 pertaining to the Assessment Year 2016-17.

2. The grounds of appeal taken by the assessee read as under :-

“1. On the facts and circumstances of the case, the order passed by the National Faceless Appellate Centre (NFAC) is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the NFAC has erred both on facts and in law in dismissing the appeal holding the same as withdrawn due to DTVSVA 2020 despite the fact that no declaration under Direct Tax Vivad se Vishwas Act, 2020 was filed by the assessee in relation to this appeal.

3. On the facts and circumstances of the case the order passed by the NFAC is bad in law, having been passed without giving the assessee an appropriate and adequate opportunity of being heard in clear violation of the principles of natural justice.

4. On the facts and circumstances of the case NFAC has erred on facts and in law in confirming the action of the AO passing the assessment order against the non-existing company.

5. (i) On the facts and circumstances of the case NFAC has erred both on facts and in law in confirming the addition of Rs. 1,74,40,090/- made by the AO on account of credits in the bank account invoking section 68 of the Income Tax Act.

(ii) That the abovesaid addition has been confirmed ignoring the submissions submitted by the assessee company before the AO.

6. On the facts and circumstances of the case NFAC has erred both on facts and in law in confirming the addition, ignoring the contention of the assessee that the order has been passed by the AO without independent application of mind and is based on borrowed satisfaction only.

7. On the facts and circumstances of the case NFAC has erred both on facts and in law in confirming the addition despite the fact that the addition has been made by the AO on the basis of material collected at the back of the assessee without giving him an opportunity to rebut the same.

8. On the facts and circumstances of the case NFAC has erred both on facts and in law ignoring the contention of the assessee that the addition has been made by the AO on the basis of extraneous consideration by grossly indulging into conjecture and surmises.”

3. Although assessee has raised various grounds, the crux of the issue is that the Id. CIT (A) under wrong impression that the assessee has opted for DTVSVA 2020 and accordingly, he has dismissed the appeal. However, factually it is incorrect. Hence, Id. Counsel of the assessee prayed that the matter may be remitted to the Id. CIT (A) to decide the issue on merits.

4. Upon careful consideration, we agree with the submission of the Id. Counsel of the assessee and this issue is remitted to the file of Id. CIT(A) for fresh adjudication.

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

Order pronounced in the open court on this 23rd day of March, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

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

**Dated the 23rd day of March, 2023
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**