

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.27/Ind/2023
(Assessment Year:2009-10)

Ghanshyam Patidar Ram Mandir Path Tarana Ujjain	vs.	ITO 1(2) Ujjain
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: DJBPP 7093 F		
Assessee by	Shri Santosh Deshmukh & Parth Jhawar, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	30.05.2023	
Date of Pronouncement	31.05.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 29.11.2022 of Ld. Commissioner of Income Tax (Appeals) (in short Ld. CIT(A), National Faceless Appeal Centre, Delhi for Assessment Year 2009-10.

2. There is a delay of two days in filing the present appeal. The assessee has filed an application for condonation of delay.

3. We have heard the Ld. AR as well as Ld. DR and carefully perused the contents of the application for condonation of delay. The Ld. DR has not objected if the delay of two (2) days in filing the appeal is condoned. Accordingly, in the facts and circumstances of the case we are satisfied

that the assessee was having reasonable cause for delay of two days in filing present appeal, same is condoned. The assessee has raised following grounds of appeal:

“1. That on the facts and circumstances of the case and in law, the Ld. CIT grossly erred in confirming addition made by the AO of Rs.1,41,400/- as unexplained cash credit u/s 68 of the Act.

2. That on the facts and circumstances of the case and in law, the Ld. CIT grossly erred in partly confirming addition of Rs.7,39,500/- as profit of the assessee u/s 44AF of the Act.

3. That on the facts and circumstances of the case and in law, Ld. CIT has erred in passing the appeal order without considering the assessee’s submissions during the appellate proceedings and remand report received from the Ld. AO during the physical hearing in past.”

4. Ld. AR of the assessee has submitted that the AO has passed *ex-parte* order u/s 144 r.w.s 147 whereby the entire deposit in the bank account have been added to the income of the assessee. He has submitted that initially the proceedings were going on before the Ld. CIT(A) were in the physical mode and the Ld. CIT(A), Ujjain called for remand report which was also submitted by the AO. A copy of which is placed at page no.25 of the paper book. In remand proceedings the AO verified the details and also recorded the statement of the assessee u/s 131 of the Act wherein the assessee has explained that the source of deposit is nothing but the sale proceeds of business of the assessee. He has further submitted that since turnover of the assessee is less than Rs.15,00,000/- therefore, the provision of section 44AF is applicable in the case and consequently only 5% of the gross receipt can be assessed as income which is less than the minimum income liable to tax.

5. He has also referred to the bank account statement and submitted that total deposit in the bank account is Rs.16,20,400/- out of which

Rs.14,79000/- was explained as turnover from the business of the assessee which is accepted by the CIT(A), however, the Ld. CIT(A) has restricted the addition to 50% of the deposit amounting to Rs.7,3950/- as against Rs.14,79,000/-. Thus, the Ld. AR has pointed out that once the case was migrated to Faceless proceedings the remand report of the AO was not considered in the faceless appeal proceedings as it was already filed before Ld. CIT(A), Ujjain in physical appeal proceedings. Hence, the Ld. AR has submitted that the addition may be restricted as per provision of section 44AF of the Act. He has relied upon the judgment of Hon'ble Gujarat High Court in case of *CIT vs. Pradeep Shantilal Patel 221 taxman 436*.

6. On the other hand, Ld. DR has submitted that the details referred by the assessee have not been produced before the Ld. CIT(A) in faceless appeal proceedings and therefore, the same are required to be examined and considered.

7. We have considered rival submission as well as relevant material on record. Initially the appeal of the assessee was pending before the Ld. CIT(A), Ujjain who also called for remand report on the evidence and explanation filed by the assessee during the course of appellate proceedings. The AO also filed remand report dated 15.12.2017 but the same was not available with the CIT(A) after the case was migrated from physical mode to faceless mode of appeal proceedings. Therefore, the impugned order passed by the CIT(A) in the faceless appeal proceeding without considering the record and documents as well as remand report of the AO is liable to be set aside. We order accordingly and the matter is remanded to the record of the Ld. CIT(A) for deciding the same afresh after considering all relevant material to be filed by assessee as well as remand report of the AO. Needless to say before passing fresh order the assessee be given appropriate opportunity of hearing as well as considering the case laws relied upon by the assessee.

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

Order pronounced in the open court on 31.05.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 31 .05.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore