

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.451/Bang/2023
Assessment Year: 2017-18

Sri Darpan Kumar, No.6, Darshan Distributors, Rekha Complex, Durgigudi Main Road, Shivamogga-577 201. PAN No. - BUTPK 2404 G	Vs.	The Income Tax Officer, Ward -3, Shivamogga.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaiana Bhatia, C.A
Respondent by	:	Smt. Supriya Rao, O.N, Addl. CIT (DR)

Date of Hearing	:	26.07.2023
Date of Pronouncement	:	31.07.2023

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1052197632(1) dated 19.04.2023 passed by the NFAC Delhi for the assessment year 2017-18 on the following grounds of appeal:-

“1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. *The learned CIT[A] is not justified upholding the order of the A.O. in completing the assessment u/s 144 of the Act without giving sufficient and effective opportunities of hearing to the appellant and without proper examination of the additional evidence tendered by the appellant on merits especially considering that the assessment order was passed exparte under the facts and circumstances of the appellant's case.*
3. *Without prejudice to the above, the learned CIT[A] is not justified in sustaining the addition of Rs. 2,72,723/- by estimating the gross profit of the appellant in an ad-hoc manner at 5.5% of the turnover as against the gross profit of 4.95% declared by the appellant, without rejecting the books of accounts, under the facts and in the circumstances of the appellant's case.*
4. *The learned CIT[A] is not justified in sustaining the ad-hoc disallowance of Rs. 3,15,264/- being 25% of the expenditure claimed by the appellant, which was disallowed by the learned A.O. without rejecting the books of accounts under the facts and in the circumstances of the appellant's case.*
5. *The learned CIT[A] is not justified in sustaining the disallowance of Rs.1,50,000/- out of commission paid invoking the provisions of section 40[a][ia] of the Act without appreciating that the appellant had deducted TDS on the commission paid under the facts and in the circumstances of the appellant's case*
6. *The learned CIT[A] is not justified in upholding the addition of Rs.7,66,162/- being the secured loans i.e. the balance in cash credit account held with State Bank of India and in respect of the balance creditors in all aggregating to a sum of Rs. 27,94,690/- added in the assessment order under the facts and in the circumstances of the appellant's case.*
7. *The learned CIT[A] is not justified in upholding the disallowance of Rs.7,500/- u/s 43B of the Act being the TDS payable paid within the prescribed time under the facts and in the circumstances of the appellant's case.*
8. *The learned CIT[A] is not justified in upholding the addition of Rs.27,39,380/- as unexplained cash deposits made during the demonetization period and taxing the same u/s.115BBE of the Act, without appreciating that these deposits made by the appellant was also forming part of the business receipts of the appellant and hence, the same could not be regarded as unexplained cash credit under the facts and in the circumstances of the appellant's case.*
9. *The learned authorities below erred in making addition of Rs. 5,93,432/- as the alleged excess balance in bank as per Balance Sheet of the appellant under the facts and in the circumstances of the appellant's case.*
10. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s.*

234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.

11. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

2. The brief facts of the case are that the assessee is carrying on the business of trading in mobile phone as authorized distributor of different companies. The assessee filed return of income on 28/10/2017 declaring an income of Rs.6,96,440/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the assessment proceedings, the AO issued various notices but no compliance was made by the assessee. Accordingly, the AO completed the assessment u/s 144 of the Act and determined the income as under:-

Summary of total income.

Total income admitted as per return of income.	Rs.6,96,440/-
Add: Expenditure disallowed as para 3	Rs.3,15,264/-
Add:G.P. addition as per para 4	Rs.2,72,723/-
Add: Expenditure disallowed u/s40(a)(ia) as per para 5	Rs 1,50,000/-
Add: Unexplained creditors as per para 6	Rs.27,94,690/-
Add: Disallowance of provision liability as per para 8	Rs. 2,59,750/-
Add: Excess bank balance reported as per para 7.	Rs. 5,93,432/-
Add: Unexplained cash deposits as per para 9	<u>Rs.27,39,380/-</u>
<u>Total income assessee</u>	
<u>Rs.78,21,679/-</u>	

3. Aggrieved from the above order, the assessee filed appeal before the CIT(A). The assessee also filed additional evidences which were sent to the AO for remand report and the AO submitted the remand

report dated 31.12.2021. The Id. CIT(A) after considering the entire material partly allowed the appeal of the assessee. Aggrieved from the above, the assessee filed appeal before the Tribunal.

4. The Id.AR of the assessee submitted that during the appellate proceedings, the assessee filed additional evidences and the details are placed at paper book page Nos.15 to 17. The CIT(A) called for remand report from the AO. She submitted that the AO as well as the CIT(A) has not properly appreciated the additional evidences filed by the assessee. Therefore, she requested that the matter may be sent back to the CIT(A) for fresh consideration of additional evidences.

5. On the other hand, the Id.DR relied on the orders of the lower authorities and she submitted that the AO gave many opportunities to the assessee but the assessee did not appear and therefore the AO was bound to complete the assessment u/s. 144. The CIT(A) also gave the opportunities for rebutting the findings of the AO in the remand report, therefore, she requested that the order of the CIT(A) should be upheld.

6. Considering the rival submissions, we note that the assessee filed additional evidence out at paper book page nos. 15 to 17 and the documents are as follows:-

From,
Darpan Kumar,
No. 6, Darshan Distributors,
Rekha Complex, Durgigudi Main Road,
Shivamogga.

25th February 2023

To,
The Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi

“Application under Rule 46A”

1. Name & Address of the Assessee: Darpan Kumar
2. PAN No.: BUTPK2404G
3. Assessment Year: 2017-18
4. E-filing Acknowledgment No.: 406385431080119 dated 08.01.2019

Respected Sir/Madam,

Sub: Leave for production of additional evidence

1. With reference to the above appeal, we request your honour to kindly permit us to submit the following additional evidence for the AY 2017-18
 - (a) Relevant vouchers/bills in support of the expenditure claimed i.e., Salary and wages and office expenses
 - (b) Copy of TDS challan and Form-16A
 - (c) Statement of Cash credit account maintained with State Bank of India showing balance as on 31.03.2017.
 - (d) Ledger account of Sundry creditors in our books of accounts (i) Autus Enterprises, (ii) Microlink Marketing and (iii) Premier IT Solutions India Pvt. Ltd.



- (e) Confirmation from Sundry creditors of Redington (India) Limited, Radiant Distributors (Zen New) and Radiant Distributors – Exmart
- (f) Copy of ledger account of Advance Computers and Mobiles India Pvt. Ltd.
- (g) Copy of case filed against Advance Computers and Mobiles India Pvt. Ltd. pending before the Hon'ble Addl. Senior Civil Judge and CJM at Shivamogga.
- (h) Copy of bank statements of current accounts maintained with Karnataka Bank and State Bank of India showing balance as on 31.03.2017.
- (i) Copy of reply furnished under Cash Transactions 2016 tab of the Income tax portal with transaction number 3639844927.
- (j) Copy of cash books, of two business verticals, representing cash balance as on 8th November 2016.
- (k) Copy of the cash book, covering the period 08.11.2016 to 30.12.2016

7. The CIT(A) called for remand report and the remand report is placed at paper book page nos. 22 to 23. The assessee filed rejoinder to the remand report. We note that the AO and CIT(A) has not properly considered and appreciated the additional evidences submitted by the assessee. Therefore, considering the prayer of the assessee, we remit the matter back to the file of the CIT(A) for fresh consideration and decision as per law, after giving reasonable opportunities to the assessee. The assessee is directed to produce necessary documents for substantiating its case and not seek unnecessary adjournment.

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

Order pronounced in the open court on 31st July, 2023.

Sd/-
(George George K)
Vice President

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore, Dated 31st July, 2023

Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.

By order

Asst. Registrar/ITAT, Bangalore