

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.989/Del/2023

[Assessment Year : 2018-19]

RKD Financial Service Ltd., 308-309, Bhandari House, 91, Nehru Place, New Delhi-110019. PAN-AAACR0734R	vs	DCIT, Cirlce-19(1), Delhi.
APPELLANT		RESPONDENT
Appellant by	Ms. Khusboo Garg, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	19.07.2023	
Date of Pronouncement	11.08.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 06.02.2023 for the assessment year 2018-19.

2. The assessee has raised following grounds of appeal:-

Ground No. 1

“That the learned CIT (A) has erred on facts and in law in passing impugned order which is contrary to law, equity and justice, facts and material on record, is arbitrary, based on conjectures and surmises, passed without application of mind.

Ground No. 2

That Hon'ble CIT (A) had not given thoughtful consideration to all the grounds of appeal and submission made and passed the appellate order in haphazard manner, which is not tenable on facts and in law.

Ground No. 3

That the learned CIT (A) has erred on facts and in law in confirming the action of AO in making adjustments u/s 143(1)(a) of the Income Tax Act,

1961 by disallowing the contribution received from employees towards ESI being late deposited amounting to Rs. 24,063/- without giving thoughtful consideration to the fact that the assessee suo motto disallowed the same in the return of income.

Ground No. 4

That the learned CIT (A) has erred on facts and in law in confirming the action of AO in making adjustments u/s 143(1)(a) of the Income Tax Act, 1961 by disallowing Rs. 13,88,000/- on account of provision of Non-Performing asset written back should not be included in the income without giving thoughtful consideration to the reply filed by the appellant.

Ground No. 5

The appellant craves, leaves to add, alter, modify, change, amend or delete, any of the grounds of appeal before or at the time of hearing of appeal.

Ground No. 6

That appellant be allowed to file additional evidences, if so, required for proper prosecution of the case, based on facts and circumstances, which has not been or could not be adduced or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appreciated.”

3. Facts giving rise to the present appeal are that during the year under consideration, the assessee was engaged in financial services activities like providing higher purchases and providing loans to the customers in Delhi. The assessee filed its return of income on 06.08.2018 through e-filing portal, declaring total income at NIL. After set off of brought forward losses of INR 41,36,191/-. The assessee received intimation u/s 143(1) of the Income Tax Act, 1961 (“the Act”), determining gross total income at INR 14,20,423/- as against the NIL return of income filed by the assessee. Thereafter, the

assessment proceedings were closed and order u/s 143(3) r.w.s. 144B of the Act was issued on 22.04.2021. Thereby, the Assessing Officer (“AO”) assessed the income of the assessee at INR 14,20,420/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Allowing the claim of set off of brought forward losses, however, he sustained the addition of INR 14,12,960/-.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. **Ground Nos. 1, 2 & 5** raised by the assessee are general in nature, need no separate adjudication hence, dismissed.

7. **Ground No.3** raised by the assessee is against the disallowance of contribution received from employees towards ESI on account of late deposit.

8. Ld. Counsel for the assessee submitted that the assessee itself had disallowed the expenditure in respect of employee’s contribution that was paid late by it.

9. On the other hand, Ld. Sr. DR opposed these submissions however, he fairly contended that matter may be restored to the AO for verification.

10. Having heard the Ld. Authorized Representatives of the parties, the issue restored to the AO for verification. The AO is hereby, directed to verify the correctness of the contention that assessee itself had disallowed the

expenditure. If AO finds it correct, he would delete the addition made on account of late deposit of employees contribution towards PF & ESI.

11. **Ground No.4** raised by the assessee is qua adjustment made u/s 143(1)(a) of the Act, regarding disallowance of Non Performing Assets (“NPA”) and is regarding not giving adequate opportunity for explaining the issue.

12. Ld. Course for the assessee submitted adequate opportunity was not provided to the assessee for explaining the issue. The impugned orders have been passed in haste without considering the facts in right perspective.

13. On the other hand, Ld. Sr. DR opposed these submissions and contended that sufficient opportunity was afforded to the assessee.

14. I have heard rival contentions of the parties and perused material available on record. The grievances of the assessee on the issue are two folds that adequate opportunity was not afforded to the assessee for explaining the facts and the facts were not appreciated in right perspective. It is seen from the records that before lower authorities, the assessee has made certain submissions qua the provision made regarding NPA. However, the submissions of the assessee are not considered and verified by the lower authorities. In my considered view, the assessee ought to have been given adequate opportunity for explaining the facts and the assessing authority ought to have verified the correctness of the same. In the written submissions filed before me, it is stated that the lower authorities incorrectly disallowed a sum of INR 13,88,000/- on account of provision of NPA returned back which were debited in previous year and has been disallowed by the assessee *suo*

motu. The similar submissions were made before Ld.CIT(A). Moreover, it was stated that provisioning of NPA was in accordance with the Reserve Bank of India guidelines. Therefore, considering the totality of the facts and material placed before us, I deem it proper to set aside this issue to AO to verify the correctness of the claim and decide afresh in accordance with law. Needless to say that AO would grant adequate opportunity of being heard to the assessee. Ground No.4 raised by the assessee is thus, allowed for statistical purposes.

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

Order pronounced in the open Court on 11th August, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI