

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

BEFORE

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

ITA No. 105/Del/2023
Asstt. Year: 2018-19

Yogesh Kumar Aggarwal C/o Agarwal Bhawan, Chandra Nagar, Saharanpur, Saharanpur, Uttar Pradesh 247 001. PAN ADLPK1862C	Vs.	ITO, Ward-3(3)(5) Saharanpur
(Appellant)		(Respondent)

Assessee by:	Shri Ajay Wadhwa, Advocate
Department by:	Shri Amit Katoch, Sr. DR
Date of Hearing:	07.08.2023
Date of pronouncement:	29.08.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 30.11.2022 of the Ld. Commissioner of Income Tax, (Appeals), NFAC Delhi (CIT(A)) pertaining to Assessment Year ("**AY**") 2018-19.

2. The assessee has taken the following grounds of appeal:-

- "1. That the order dated 04.05.2021 passed by the National Assessment Centre, Delhi (referred to as the "Ld. AO") under section 143(3) r.w.s. 144B of the Income Tax Act, 1961 ("the Act") as well as the order dated 30.11.2022 passed by the Ld. Commissioner of Income Tax (Appeals), Delhi (referred to as "CIT (A)") sustaining the order of Ld. AO is bad in law and on facts

2. *That the Ld. AO has erred on facts and in law in making addition of Rs. 1,24,00,000/- treating the unsecured loan as cash credit of the assessee under section 68 r.w.s 1153BBE of the Act.*
3. *That the impugned order passed by the Ld. AO is beyond jurisdiction as the case of the assessee was selected for scrutiny for verification of limited issues i.e. verification of quantitative details of stock and securities (derivative) transactions but the addition made is in respect of loans taken which is altogether an different issue and out of the scope of the proceedings.*
4. *That the Ld. AO has erred in passing the impugned order without considering the severe impact of Covid on health of the assessee and the his counsel who were suffering on COVID- 19 and has also erred in not providing him the meaningful opportunity of being heard*
5. *That the Ld. CIT (A) has erred on facts and in law in confirming the order passed by the Ld. AO making addition of Rs. 1,24,00,000/- without appreciating the submissions filed by the assessee along with the documentary evidences which established the identity, creditworthiness and genuineness of the loan transaction undertaken by the assessee.”*

3. Briefly stated, the assessee e-filed return for AY 2018-19 on 31.10.2018 declaring income of Rs. 5,00,000/- from business of retail sale of other product NEC trading of shares and securities. It was selected for complete scrutiny under CASS. During assessment proceedings notice under section 143(2) of the Income Tax Act, 1961 (**the “Act”**) was served upon the assessee through e-proceeding facility/ITBA. In response thereto, the assessee filed written reply on 12.10.2019 and 30.7.2020. On verification of Form 3CD filed by the assessee along with the return, the Ld. Assessing Officer (**“AO”**) found that during the year the assessee had obtained unsecured loan of Rs. 1 crore and Rs. 24 lakhs from Paras Fincap Ltd. and Survin Finance and Investment Ltd. respectively. The Ld. AO required the assessee to prove genuineness of the said loans but the assessee failed to do so by furnishing documentary evidence. The Ld. AO therefore, treated the said unsecured loans as unproved and added the same to the income of the assessee under section 68 of the Act. Accordingly, he completed the assessment on total income of Rs.1,29,00,000/- on

04.05.2021 under section 143(3) r.w.s. 144B of the Act with DIN ITBA/AST/S/143(3)/2021-22/1032776825(1).

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) but did not succeed in getting any relief. This has brought the assessee before the Tribunal challenging the impugned addition in all the grounds.

5. The Ld. AR submitted that the Ld. AO passed the assessment order without providing a meaningful opportunity to the assessee to present his case. The first notice was issued by the Ld. AO when there was deadly second wave of COVID in the country and both the assessee as well as his counsel were suffering from severe COVID. Show cause notice was issued when both were hospitalised due to COVID which led to death of the counsel on 05.05.2021. Pages 41-43 of the Paper Book are the medical reports of the assessee.

6. The Ld. AR further submitted that before the Ld. CIT(A) the assessee explained the reasons for not furnishing details and documents before the Ld. AO and filed the documentary evidence in the form of ITR of lenders, PAN of the parties, Bank statement of the lenders, their NBFC certificate etc. to establish the identity of the lenders, genuineness of the transactions and the creditworthiness of the parties. Pages 48 to 58 of the Paper Book contain these documents. The Ld. CIT(A) did not take the documents on record and observed in para 7 of his order that even before him confirmation letters from the parties and their three years of ITR were not produced resulting in the confirmation of the impugned addition.

7. The Ld. AR urged that the matter be restored to the file of the Ld. AO for decision afresh. The Ld. DR had no objection.

8. On the facts and in the circumstances of the case, we are of the opinion that in the interest of justice and fair play it is expedient to restore the matter back to the file of the Ld. AO with a direction to him to allow reasonable opportunity to the assessee to present his case and to file

documentary evidence in support and pass order denovo in accordance with law. We order accordingly.

9. Consequently, the order of the Ld. CIT(A) is set aside.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 29th August, 2023.

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

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

Dated: 29/08/2023

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	