

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No.833/DEL/2023
Assessment Year 2017-18

Jewel Palace Pvt. Ltd. E-38, Lajpat Nagar-II, Delhi	v.	ITO Ward-13(3) Delhi.
TAN/PAN: AAACJ7029B		
(Appellant)		(Respondent)

Appellant by:	Shri Ved Jain, Adv. Shri Aman Garg, CA		
Respondent by:	Mr. Waseem Arshad, CIT (DR)		
Date of hearing:	14	09	2023
Date of pronouncement:	14	09	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [‘CIT(A)’ in short] dated 03.03.2023 arising from the assessment order dated 10.12.2019 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

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

“1. That the order of learned Commissioner of Income-tax (Appeals) is against facts and law.

2. That the learned Commissioner of Income-tax (Appeals) is not justified in disposing off the appeal without giving reasonable opportunity of representation in as much as the appeal has been disposed off ex-party without considering the fact that the date of hearing i.e., 15.01.2021 falls in Covid period and even for the other

two dates the appellant had applied for adjournments which have not been considered and the appeal has been disposed off without considering the merits of the case and the submissions made during the course of the assessment proceedings. Hence there is no application of mind

3. That the learned Commissioner of Income-tax (Appeals) is not justified in confirming the addition of Rs. 1,35,68,500/- being sales made & holding it to be a cash credit under section 68 of the Income-tax Act, 1961 without considering the merits of submissions.”

3. When the matter was called for hearing, the ld. counsel for the assessee submitted at the outset that the addition made by the Assessing Officer amounting to Rs.1,35,68,500/- on account of unexplained cash deposits in the bank account during demonetization period is wholly unjustified in the light of the direct and circumstantial evidences placed before the Assessing Officer.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however passed an *ex-parte* order without discussing the merits of the case solely for the reason that the assessee has failed to file responses to notices issued on three occasions as stipulated in the first appellate order.

5. To rebut the observations of the CIT(A), the ld. counsel adverted our attention to the adjournment letters filed against each notices so issued. It was contended that CIT(A) has omitted to take note of the request for adjournment and it is not a case of no reply *per se* as alleged by the CIT(A). The ld. counsel thus pleaded violation of principles of natural justice and urged for remitting the matter back for logical conclusion in the matter after considering the reply of the assessee on merits.

6. In the light of the submissions made on behalf of the assessee and on perusal of the case records, we find justification in the plea advanced on behalf of the assessee. It is noticed that the CIT(A) has issued notices for hearing on three occasions and the assessee has duly replied on all occasions and sought adjournment. To our mind, the CIT(A) acted hurriedly without giving proper opportunity. There can be a variety of reasons for non compliance in such a short period. Having regard to the fact that assessee has duly attended before the Assessing Officer, it cannot be ordinarily presumed that assessee has willfully disobeyed the notice of hearing to its own detriment. Coupled with these, the CIT(A) has ought to be adjudicated the appeal on merits after examining the material on record. Hence, guided by the principles of objectivity, fairness and justice, we consider it just and proper to remit the matter back to the file of the CIT(A) for fresh adjudication in accordance with law after giving proper opportunity to the assessee.

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

Order pronounced in the open Court on 14/09/2023.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**