

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1708/Del/2022
[Assessment Year : 2010-11]**

Harender Kumar, Near Telephone Exchange, Tila Mod Loni, Loni, Ghaziabad, Uttar Pradesh. PAN-AMOPK5215B	vs	ITO, Ward-1(3), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	Shri Mayank Choudhary, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	26.09.2023	
Date of Pronouncement	26.09.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2010-11 is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 30.03.2022. The assessee has raised following grounds of appeal:-

1. *“BECAUSE THE ORDER PASSED BY THE LD. CIT(A) IS BAD IN LAW AND IS AGAINST THE FACTS AND CIRCUMSTANCES OF THE CASE AND HENCE IS UNSTAINABLE.*
2. *That the Ld. CIT (A) has failed to provide the proper opportunity of being heard. Hence the order is liable to be quashed.*
3. *That the Ld. AO has erred in passing the assessment order as the notice issued under section 148 of the Income Tax Act, 1961 had not served to the assessee, so the addition is invalid.*
4. *That the Ld. CIT (A) has wrongly considered the cash deposits as income as all the receipts are of business nature and included in the gross receipts of Rs 54,53,193/- as shown in the Profit and Loss Account.*
5. *The assessee has the right to add or modify any ground of appeal.*

6. *In terms of above, the addition of Rs. 13,40,050/- is illegal and arbitrary and bad in law, hence it is prayed that the addition may kindly be quashed in TOTO.”*

2. The present appeal is barred by limitation. There is a delay of 54 days in filing the appeal. The assessee has filed an application seeking condonation of delay. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions seeking condonation of delay.

3. Ld.Sr.DR opposed the submission of the assessee.

4. We have heard both parties and perused the material available on record. After considering the reasons stated in the condonation application and contention of Ld. Sr. DR, delay in filing of the appeal is condoned. Therefore, appeal is admitted for adjudication on merit.

5. At the outset, Ld. Counsel for the assessee submitted that there was no representation on behalf of the assessee. He contended that the assessee has filed an application under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963 for admission of additional evidences. Ld. Counsel for the assessee submitted that there was a reasonable cause for non-representation on behalf of the assessee as the notices of hearing were not received by the assessee.

6. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

7. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. I find that before lower authorities, there was no effective representation on behalf of the assessee. The assessee has filed certain evidences that the action of the Assessing Officer (“AO”) for making

addition of the entire cash deposits in the bank account was not justified. Therefore, looking to the totality of the facts and the material placed before me, the impugned order is hereby, set aside and the assessment is restored to the file of the AO for making assessment afresh after giving adequate opportunity of being heard to the assessee to represent his case. The assessee is hereby, directed not to seek adjournment without reasonable cause and cooperate in the assessment proceedings. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 26th September, 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