

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1623/Del./2023
(ASSESSMENT YEAR : 2016-17)**

Intra accessories, vs. ITO, Ward 2 (1),
Gali Agha Wali, Baradari Street, Moradabad.
Moradabad – 244 001 (Uttar Pradesh).

(PAN : AAEFI2635K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Mohammed Ammar, CA
Shri Tariq Nafees, Advocate
REVENUE BY : Shri Baldev Singh Negi, Sr. DR

Date of Hearing : 31.10.2023
Date of Order : 02.11.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated
28.03.2023 for the Assessment Year 2016-17.

2. Grounds of appeal taken by the assessee read as under :-

“1. The Ld. CIT (A), NFAC has failed to appraise the fact that Ld. CIT(A), Moradabad had issued directions to the AO to verify the claim of expenditure made by the appellant which were not acted upon by him till date. Hence, affirmation of original assessment order by the Ld. CIT(A), NFAC is a nullity in the eyes of law.

2. That the Ld. CIT(A), NFAC has erred on facts and under the law in confirming the addition of Rs.7,98,521.00 to the total income of the appellant because; (i) The Ld. CIT(A) has failed to appraise the fact that the AO, without rejecting the books of accounts of the appellant firm, arbitrarily disallowed a sum of Rs.798521.00 i.e. 25% of the total sales commission of Rs.3194086.00 paid to Indian Oil Corporation. (ii) The Ld. CIT (A) has failed to appraise the fact that the entire commission amount of Rs. 3194086 paid to IOC was paid through account payee cheques/RTGS after deduction of tax at source.”

3. Brief facts of the case are that assessment order in this case was passed under section 144 of the Income-tax Act, 1961 (for short 'the Act') and 25% of total commission on sale expenses was disallowed and added at Rs.7,98,521/-. Upon assessee's appeal, Id. CIT (A) noted that assessee has not submitted the necessary details. Hence, Id. CIT (A) provided one more opportunity vide letter dated 14.06.2019 which is as under :-

“ In this case, the assessment order was passed u/s 144 on 06.11.2018. The AO disallowed 25% of the total commission on sales amounting to Rs.31,94,086/- claimed by the appellant. The appellant has submitted before me that during the online assessment proceedings, it was not able to upload the required documents due to some technical problems. In view of the submission given by the appellant and also in the interest in natural justice, one more opportunity is required to be given to the appellant.

Therefore, you are directed to verify the necessary documents after giving proper opportunity of being heard to the appellant and submit a factual report on this issue. Your report should be submitted on or before 21.06.2019”

Thereafter, no communication was received and the Id. CIT (A) proceeded to uphold the assessment order.

4. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

5. We note that assessee in this case, in the interest of justice, deserves one more opportunity to canvass the case properly. Hence, we remit the issue to the file of AO. AO shall pass an order after giving the assessee an opportunity of being heard.

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

Order pronounced in the open court on this 2nd day of October, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

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

**Dated the 2nd day of November, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**
