

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.884/Kol/2023
Assessment Year: 2017-18**

GHSPL Sambhav KNJ Healthcare LLP, 3B, 207, Ecospace Business Park, Ecospace, Rajarhat, action Area II, New Town, Kolkata0700156. (PAN: AAMFG0559L)	Vs.	DCIT, Circle - 50(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Anil Kochar, Advocate
Respondent by : Shri Abhijit Kundu, CIT, DR

Date of Hearing : 13.12.2023
Date of Pronouncement : 01.01.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1055269896(1) dated 21.08.2023 passed against the assessment order by ACIT, Circle-50(1), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 24.12.2019 for AY 2017-18.

2. Grounds raised by the assessee are reproduced as under:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. *For that the order passed by the Ld. CIT (A) is totally perverse in as much as the grounds of appeal taken by the appellant have been adjudicated partly only.*
3. *For that the Ld. CIT (A) erred in treating the notice issued u/s. 143(2) of the Act as valid on alleged grounds.*
4. *For that the Ld. CIT (A) erred in misinterpreting the provision of Law in Sec.292BB which relates to service of notice but not its legality and/or validity in the eyes of Law and consequently holding the notice issued u/s. 143(2) of the Act as valid.*
5. *For that the Ld. CIT (A) erred in not adjudicating the Grounds of Appeal No.1, 2 & 3.*
6. *For that the Ld. CIT (A) ought to have adjudicated the Grounds taken at Sl. No.1, 2 & 3 and non-adjudication of the same renders the order so passed as biased and not in proper perspective of the provisions of Law.*
7. *For that the Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs.1,19,42,120/- made by the A.O. u/s 69A of the Act in respect of cash deposit on alleged grounds.*
8. *For that the Ld. CIT (A) erred in confirming the action of the A.O. in invoking provision of Sec.69A of the Act which relates to unexplained money whereas the amount of Rs.1,19,42,120/- was duly incorporated in the books of accounts.*
9. *For that the application of provision of Sec.69A of the Act is wrong and bad-in-law.*
10. *For that the Ld. CIT(A) erred in confirming addition of Rs.36,26,970/- provided by one of the partner on alleged grounds.*
11. *For that the Ld. CIT(A) miserably failed to appreciate and accept the explanation of the appellant in respect of cash credit of Rs.36,26,970/- by one of the partner of the appellant.*
12. *For that the Ld. CIT(A) erred in confirming the estimated addition of 15% out of Travelling & Conveyance and Advertisement and Sales Promotion made by the A.O. on alleged grounds.*
13. *For that, without prejudice, the addition so made on estimate @ 15% of the total expenditure and confirmed by the CIT (A) is wrong and uncalled for and/or otherwise high & excessive.*
14. *For that the Ld. CIT (A) erred in confirming the action of the A.O. with regard to addition of Rs.4,63,50,401/- on account of cash credit inspite of the fact that the amount was contributed by one of the partner.*
15. *For that the Ld. CIT (A) erred in not properly appreciating the evidences adduced by the appellant in respect of loan of Rs.4,63,50,401/- and consequently confirming the addition u/s. 68 of the Act.*
16. *For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.*

3. Brief facts of the case are that assessee filed its return of income on 02.11.2017 reporting total income as loss of Rs.10,28,78,112/-.

Return was processed u/s. 143(1) of the Act. Subsequently the case was selected for scrutiny through CASS. Notices u/s 143(2) and u/s 142(1) were issued and duly complied with. The assessee, a firm, is a service provider in healthcare Sector i.e., owning and operating a multi-specialty Hospital. Ld. A.O. observed that the assessee had made huge cash deposit during demonetization period. In order to verify the source of cash deposits made in the Bank accounts maintained by the assessee, he required evidences along with cash book. There being no compliance by the assessee due to unavoidable reasons, he proceeded to treat the cash deposit of Rs. 1,19,42,120/- made during the year as unexplained cash deposits/money u/s 69A of the Act. The Ld. A.O. also made addition of Rs.36,26,970/- invoking the provision of Sec.68 in respect of short term borrowings. In respect of expenditure incurred towards 'Travelling & Conveyance expenses' and 'Advertisement and Sales Promotion Expenses', the Ld. A.O. disallowed 15% of the total expenditure which amounts to Rs.17,79,922/-. There being no compliance to the notice issued u/s 142(1) dated 05.08.2019 whereby the A.O. has required the assessee to submit the details in respect of new loan deposits amounting to Rs.4,63,50,401/-. Assessee claims to have submitted the reply on 24.12.2019 which was not been considered by the A.O. and proceeded to hold the entire amount of Rs.4,63,50,401/- as unexplained cash credit u/s 68 of the Act.

4. Aggrieved, assessee went in appeal before the Ld. CIT(A) which was dismissed. Aggrieved, assessee is now in appeal before the Tribunal.

5. On a specific query raised by the Bench based on perusal of the order of Ld. CIT(A) in respect of repeated observations to understand reasons that assessee has failed to comply with the requirements of notice issued u/s. 142(1) by the Ld. AO and has also not supplied the

relevant documents and details in the appellate proceedings resulting in the dismissal of the first appeal. Ld. Counsel for the assessee submitted that compliance could not be made by the assessee due to certain unavoidable reasons and thus, pleaded that the matter may be restored back to the file of Ld. AO for making all the required compliances and furnishing details and documents to substantiate the claim made in the return.

5.1. From the observations and findings given by the Ld CIT(A) on each of the issues, additions/disallowances for which grounds have been raised before the Tribunal, we note that Ld. AO had issued notice u/s. 142(1) dated 05.08.2019 requiring the assessee to furnish details and documents on each of the addition/disallowance. Since there was no compliance, another notice was issued dated 22.11.2019 which also remained uncomplied. Ld. AO then issued a final show cause notice on 14.12.2019 for the proposed additions/disallowances. Again nothing came out from the assessee and thus, Ld. AO proceeded to complete the assessment based on details available on record. We also note that though Ld. AO has referred to section 143(3) while passing the impugned assessment order, essentially it is an ex parte order passed on the basis of material available on record without any compliance met by the assessee.

5.2. Before the Ld. CIT(A) as noted in the impugned first appellate order, assessee has failed to provide the required details and documents to adjudicate upon the issues raised in the first appeal. Ld. Counsel for the assessee has placed certain details and documents in the course of hearing before us containing chart for cash deposit in the bank account and print out of a bank book. He has also placed on record a paper book containing 105 pages for substantiating the claims of the assessee.

5.3. On confronting the plea raised by the Ld. Counsel of the assessee to the Ld. CIT, DR restoring the matter back to the file of Ld. AO, nothing objectionable was putforth before us. In the interest of justice and fair play based on perusal of the orders of the authorities below and taking into account the plea raised by the Ld. Counsel, we find it proper to remit the matter back to the file of Ld. AO for de novo adjudication and assessment on the additions/disallowances challenged before us. The Ld. AO is directed to pass a speaking order after taking into consideration all the submissions and explanations furnished by the assessee. Needless to say that the assessee be given reasonable opportunity of hearing to furnish all of its submission on the claims made by it in respect of disallowance/addition challenged before us. Accordingly, the appeal of the assessee is allowed for statistical purposes. Since we are remitting the matter back to the file of Ld. AO, grounds raised by the assessee on jurisdictional issues and merits of the case are not adjudicated upon.

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

Order is pronounced in the open court on 01.01.2024

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 01.01.2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata