

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री अनिकेश बनर्जी, न्यायिक सदस्य
के समक्ष

Before
DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No.: 991/KOL/2023
Assessment Year: 2017-18

Smt. Renuka Jana.....Appellant
[PAN: ARUPJ 8654 N]

Vs.

ITO, Ward-27(2), Haldia.....Respondent

Appearances:

Assessee represented by: Sh. S. Jhajaria, CA.

Department represented by: Sh. L.N. Dash, Addl. CIT(D/R).

Date of concluding the hearing : January 24th, 2024

Date of pronouncing the order : January 25th, 2024

ORDER

Per Anikesh Banerjee, Judicial Member:

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income-tax (appeals)-NFAC, Delhi [in brevity ld. 'CIT(A)'] dated 31.07.2023 passed u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act') for assessment year 2017-18. The impugned order was emanated from the order of the ld. Income-tax Officer, Ward-27(2), Haldia (in brevity the 'AO') passed u/s 143(3) of the Act dated 27.12.2019.

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

"1. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the action of the AO in affirming the addition

of Rs. 10,56,125/- (Rs. 7,76,125/- + Rs.2,80,000/-) as undisclosed investment u/s 69 and in view of the facts and in the circumstances the action of the Ld. CIT(A) is bad in law and in view of the facts and in the circumstances it may be held accordingly.

2. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the action of the AO in affirming the addition of Rs. 7,76,125/- (being deposit in Savings Account No. 2666660738) as undisclosed investment u/s 69 and in view of the facts and in the circumstances the action of the Ld. CIT(A) is bad in law and in view of the facts and in the circumstances it may be held accordingly.

3. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the action of the AO in affirming the addition of Rs.2,80,000/- (being deposit in Savings Account No. 6424940315) as undisclosed investment u/s 69 and in view of the facts and in the circumstances the action of the Ld. CIT(A) is bad in law and in view of the facts and in the circumstances it may be held accordingly.

4. Without prejudice to Grounds No. 1, 2 & 3 above, the Ld. CIT(A) was wholly unjustified in affirming the action of the AO in not appreciating the fact that the amount so deposited in the bank was out of the withdrawal so made from the Savings Account and in view of the facts and in the circumstances it may be held accordingly. Even otherwise and without prejudice the AO has unjustifiably held that appellant is not engaged in "business" when AO himself had accepted the "business income" so declared by appellant and hence the addition of Rs. 10,56,125/- is bad in law and it may be held accordingly.

5. That the appellant craves leave to adduce additional grounds and / or to amend or withdraw any of the foregoing grounds on or before the hearing of appeal."

3. At the outset, ld. Counsel for the assessee submitted that in the instant appeal, the impugned order is *ex-parte* and the assessee failed to get sufficient opportunity to give the submissions and file relevant documents in support of its grounds raised before ld. CIT(A). Prayer was made to restore all the issues in the instant appeal to the ld. CIT(A) for fresh adjudication.

4. Ld. D/R was fair enough in not raising any objection if the issues raised in the instant appeal is restored to ld. CIT(A).

5. We have heard rival contentions and perused the records placed before us. From perusal of the impugned order, we find that there was no appearance

on behalf of the assessee before the Id. CIT(A) and the impugned order was passed *ex-parte*.

6. We, therefore, considering the prayer made by the Id. Counsel for the assessee and no objection being raised by Id. D/R, restore all the issues in the instant appeal to the Id. CIT(A) for fresh adjudication and to pass a speaking order after considering the submissions as well as the relevant documents to be filed by the assessee on being provided adequate opportunity and to decide in accordance with law. The observations herein made by us in remanding the matter back to the file of the Id. CIT(A) will not impair or injure the case of the revenue nor will it cause any prejudice to the defence/explanation of the assessee. The assessee is directed to remain vigilant and file necessary documents, if considered, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause.

7. In the result, the appeal filed by the assessee in **ITA No. 991/KOL/2023** is allowed for statistical purposes.

Kolkata, the 25th January, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 24.01.2024

Bidhan (P.S.)

Sd/-

[Anikesh Banerjee]

Judicial Member

Copy of the order forwarded to:

1. **Smt. Renuka Jana, C/o. M/s. Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata-700 072.**
2. **ITO, Ward-27(2), Haldia.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata