

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.3533/Del/2023
(Assessment Year: 2011-12)**

Parmod Kumar,
C-9, 9553, Vasant Kunj,
New Delhi – 110 070.

vs.

ITO, Ward 45 (2),
New Delhi.

(PAN : AFUPK6599M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri G.S. Kohli, CA
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 29.01.2024
Date of Order : 02.02.2024

ORDER

This appeal by the assessee is directed against the order of Id. CIT(A)/ National Faceless Appeal Centre (NFAC) dated 08.11.2023 for the Assessment Year 2011-12.

2. Although assessee has raised various issues, Id. Counsel of the assessee submitted that this appeal is against the penalty levied and confirmed by the Id. CIT (A) under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act').

3. Ld. Counsel pleaded that in the quantum appeal in assessee's own case, the matter has been remanded by the ITAT to the file of AO. Hence, he submitted that penalty order should also be remanded to the AO for consideration afresh.

4. Per contra, ld. DR for the Revenue did not have any objection to this proposition.

5. Upon careful consideration, I find that this Tribunal in assessee's own case in quantum appeal has concluded as under :-

“ Considering the totality of the facts and the material placed before me, there is no dispute with regard to the fact that the AO had applied profit rate @ 25% of the gross receipts, meaning thereby the AO has treated the cash deposit into the bank accounts as business receipts of the assessee. Hence, the AO, in my considered view, ought to have examined the past history and the profit declared by similarly situated assessee. Under these facts the orders of the authorities below cannot be sustained. Hence, I hereby set aside the impugned order and restore the assessment to the file of the AO to make assessment afresh, in accordance with law, after making due inquiry regarding business carried out by the assessee and also take into consideration the past history of the profit declared by the assessee. Needless to say, the AO will provide adequate opportunity to the assessee of being heard. Grounds raised in this appeal are allowed for statistical purposes.”

Since the quantum appeal has been remanded to the AO, I also deem it appropriate to remand this issue to the file of AO. Needless to add, assessee should be granted adequate opportunity of being heard.

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

Order pronounced in the open court on this 2nd day of February, 2024.

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

**Dated the 2nd day of February, 2024
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Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**