

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 832/Kol/2023**  
**Assessment Year : 2011-12**

Darpan Vinimay Private Limited	vs	DC/ACIT, Circle-1(1), Kolkata
PAN: AACCD 0992 M		
Appellant		Respondent

Date of Hearing	11.01.2024
Date of Pronouncement	21.02.2024
For the Assessee	Mr. Arvind Agarwal, AR
For the Revenue	Mr. P.P. Barman, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2011-12 is directed against the order dated 11.05.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. Because the ld. Commissioner of Income-tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC) erred in law as well as in facts in dismissing the appeal of the appellant, on the ground of non-compliance to several opportunity provided, even though the appellant had filed adjournment petitions to the hearing notices, and as such the conclusion of the National Faceless Appeal Centre are contrary to the facts and material on record, and the dismissing of the appeal is bad in law and void.*

*2. Because the ld. Commissioner of Income-tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC) erred in law as well as in facts in holding that, "no submission has been uploaded by the appellant on the ITBA", and his such conclusions are based on his surmises and conjunctures and are contrary to the facts and material on record, and hence unsustainable.*

3. Because the ld. Commissioner of Income-tax Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC) erred in law as well as in facts, in holding that, "there is not infirmity in the action of the AO, and as such the grounds so raised by the appellant is dismissed". His such conclusions are based on his surmises and conjunctures and is grossly unjustified, erroneous and unsustainable, and are contrary to the facts and material on record and provision of law.

4. Because the ld. Commissioner of Income-tax (Appeals), Income Tax Department, National Faceless Appeal Centre (NFAC) erred in law as well as in facts in holding that, "the appellant had not made any specific submission either in the grounds of appeal and statement of facts and the appellant is preferred to be totally non-compliant, and as such the appeal is dismissed". His such conclusions are based on his surmises and Conjunctures and are contrary to the facts and material on record and unsustainable.

5. The addition of Rs.35,00,000/- as made by the ld. Jurisdictional AO erstwhile DCIT Circle-3(1), Kolkata, u/s 68 of the Income Tax Act 1961 and upheld by the National Faceless Appeal Centre (NFAC), are based on surmises and conjunctures and is unjustified and contrary to the provision of section 68 of the I.T. Act 1961, and hence unsustainable.

6. Because the addition so made u/s 68 of the I.T. Act 1961 by the ld. Jurisdictional AO erstwhile DCIT Circle-3(1), Kolkata, and sustained by the NFAC, are based on mere suspicion and information gathered from the Investigation Wing, without granting any opportunity of cross-examination and/or providing with such information for rebuttal of the appellant, on the basis of which the addition was made, is bad in law and void and unsustainable.

7. Because the addition so made u/s 68 of the I.T. Act 1961 of Rs.35,00,000/- by the ld. Jurisdictional AO erstwhile DCIT Circle-3(1), Kolkata, and sustained by the National Faceless Appeal Centre (NFAC), are contrary to the facts, material and evidences on record, and as such the addition is unsustainable.

8. Because the National Faceless Appeal Centre (NFAC) ought not to have sustained the addition under the provision of section 68 of the I.T. Act 1961 of Rs.35,00,000/-, as the appellant had provided with the identity, creditworthiness and genuineness of the transaction.

*9. Because the demand so raised in the impugned assessment order of Rs.23,06,380/- is in addition u/s 68 of the I.T. Act 1961, which is unsustainable and hence the demand is unrealizable.*

*10. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”*

2. At the outset, we find that there is a delay of 31 days in filing of the appeal by the assessee. We after perusing the petition for condonation are convinced that the assessee was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. Brief facts of the case are that assessee filed its return of income declaring total income of Rs. 45,77,445/-. Thereafter, the case of the assessee was reopened with prior approval of the appropriate authority notice issue u/s 148 of the I.T. Act. In response to the notice assessee filed its return of income declaring same income as filed in its earlier return. Immediately after the same, the ld. AO issued statutory notice u/s 143(2) as well as 142(1) of the Act upon the assessee. During the course of assessment proceeding assessee was asked to furnish details and nature of transaction with M/s. Giriraj Vyapaar Pvt. Ltd. during the assessment year in question. The assessee has failed to establish & furnish the details of the nature of transaction with the alleged concern M/s. Giriraj Vyapaar Pvt. Ltd. and ultimately assessee attended the office of the AO on 13.11.2018 by filing submissions which were not found tenable by the AO and the ld. AO concluded that assessee has nothing to say on the issue of amount of Rs. 35,00,000/- received from M/s. Giriraj Vyapaar Pvt. Ltd.

accordingly, it was added to the total income of the assessee by treating it as cash credit u/s 68 of the Act.

4. Aggrieved by the above order assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed by stating that assessee has not made any specific submission either in the grounds of appeal and statement of the fact. The ld. CIT(A) also alleged that reasonable opportunity were provided by the AO to the assessee right from such reassessment proceeding till the finalization of the reassessment order. However, the assessee has preferred to the totally non-compliant at each and every stage before the ld. AO as well as before him. Therefore, the ld. CIT(A) sustained the order passed by ld. AO by dismissing the appeal of the assessee.

5. Dissatisfied with the above order assessee is in appeal before this Tribunal raising multiple grounds of appeal. However, the main grievance of the assessee is that while passing the impugned order by ld. CIT(A) dismissing the appeal of the assessee on the ground that non-compliance to several opportunities provided to the assessee and as such conclusion made by NFAC are contrary to the facts and material available on record which is bad in law. Therefore, the impugned order may be set aside to the file of AO with the direction to decide the issue afresh after giving reasonable opportunity to the assessee to furnish supported documents before him. On the other hand, ld. DR did not make any objection to such prayer made by the AR of the assessee.

6. We, after hearing the submission of the parties perusing the material available on record find that conclusion made by ld. NFAC are contrary to the facts. Therefore, we remand the whole issue to the file of AO with the direction to give reasonable opportunity of being heard to the assessee by allowing necessary documents in support of its claim before him. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 21.02.2024

Sd/-

(Rajesh Kumar)  
Accountant Member

Sd/-

(Sonjoy Sarma)  
Judicial Member

Dated: 21.02.2024

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant – Darpan Vinimay Private Limited, 35, Block G, 3<sup>rd</sup> Floor, Humayan Kabir Sarani, Kolkata-700053.
2. Respondent – DC/ACIT, Circle-1(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata