

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.2707/Del/2023
[Assessment Year : 2017-18]**

UPPA Bajaj, B 7/218, Sector-5, Rohini, Delhi-110085. PAN-AIAPB0248F	vs	ITO, Ward-35(2), Civic Centre, Delhi-110002.
APPELLANT		RESPONDENT
Appellant by	Shri Sourabh Rohtagi, CA	
Respondent by	Shri Amit Katoch, Sr. DR	
Date of Hearing	13.03.2024	
Date of Pronouncement	15.03.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order dated 31.07.2023 passed by Ld.CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

1. *"That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in passing and sustaining order U/s. 144 of the 1.T. Act 1961.*
2. *That under the fact & circumstance, Ld. CIT(A) erred in law in not providing the reasonable opportunity of being heard and deciding the appeal ex-parte.*
3. *That under the fact & circumstance, Ld. CIT(A) erred in law in not quashing the Asstt. Order since reasonable opportunity of being heard not provided by Ld. A.O. and passed ex-parte Asstt. order.*
4. *That under the fact & circumstance, both lower authorities erred in law in rejecting the books of accounts.*

5. *That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in making and sustaining addition of Rs. 14,71,313/- (3276396-1805083) being excess of 2% gross profit i.e. Rs. 32,76,396/- on estimated turnover of Rs. 16,38,19,796/- and gross profit of Rs. 18,05,083/- as already declared by assessee.*
6. *That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in making and sustaining addition of Rs. 3,85,09,900/- being cash deposited in bank during demonetization U/s. 68 of the I.T. Act.”*

2. Facts giving rise to the present appeal are that the assessee filed return of income on 31.10.2017, declaring total income of INR 5,76,150/-. The case was selected for scrutiny assessment and the assessment was framed u/s 144 of the Income Tax Act, 1961 (“the Act”) vide order dated 28.12.2019. Thereby, the Assessing Officer (“AO”) assessed the income at INR 4,05,57,360/- by making addition on account of income from business and profession of INR 14,71,313/-and unexplained cash credit u/s 68 of the Act, amounting to INR 3,85,09,900/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, also sustained the addition and dismissed the appeal, on the ground that there was no representation on behalf of the assessee.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

5. At the outset, Ld. Counsel for the assessee contended that the assessee was not given sufficient opportunity and there was no effective representation

on behalf of the assessee. She ought to have been given sufficient opportunity to present her case.

6. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He contended that Ld.CIT(A) as well as AO has given sufficient opportunity to the assessee to present her case but the assessee failed to avail the opportunity afforded to her.

7. In re-joinder, Ld. Counsel for the assessee submitted that the notice of hearing could not be received by the assessee as there was technical problem.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the appeal in paras 8 & 9 of the impugned order. For the sake of clarity, paras 8 & 9 of the impugned order are reproduced a sunder:-

8.1. *“I have given my thoughtful consideration to the submissions made by the assessee and examined them in the light of the facts of the case and relevant provisions of the statute.*

8.2 *At the outset, it is not under dispute that, even after availing of sufficient time and adequate number of opportunities of hearing also the assessee had not responded. Hence, AO resorted to estimate the gross profit of the assessee from business of trading of Amul Milk is calculated at the rate of 2% of the turnover which comes out to be Rs. 32,76,396/-. However, the assessee has shown gross profit of Rs.18,05,083/-, Therefore, income of the assessee is increased by an amount of Rs. 14,71,313/-being the difference in the gross profit.*

8.3 *Be that as it may, even during the course of appellate proceedings, the assessee has not responded to the notices issued and has not*

furnished the books of account and related records for examination during the course of appellate proceedings.

- 8.4 *Faced with this situation, keeping in view of the facts and circumstances, in the absence of any details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of Rs.14,71,313/- warranting no interference of the appellate authority.*

9.0 DECISION (II):

- 9.1 *I have given my thoughtful consideration to the issue under dispute and found that the AO made the impugned addition based on proper appreciation of factual matrix of the case well supported by tangible evidence in the shape of bank statement copies and information gathered from the bank authorities u/s.133(6) of the Act.*
- 9.2 *At the outset, it is an admitted fact that consequent to demonetization of SBNs i.e., Rs.500/- and Rs.1000/- notes, i.e., w.e.f. 09.11.2016, it made illegal to transact in SBNs while conducting business operations or for that matter any other activities in exchange of SBNs.*
- 9.3 *In the instant case, as per the finding of facts recorded by the AO, the assessee failed to submit the proper record as envisaged under RBI Notification in S.O. No.3408(E) dated 08.11.2016 (supra), which forced the AO to make the impugned addition of Rs.3,85,09,900/- being the amount of SBNs deposited in the bank accounts maintained by the assessee during the demonetization period.*
- 9.4 *Further, even during the course of present appellate proceedings, the assessee has miserably failed to rebut the findings of the AO regarding maintenance of records as stipulated by the notification issued by the RBI in respect of business transacted through SBNs of Rs.500/- note during the demonetization period. Under the circumstances, in the absence of any details or documentary evidence forthcoming from the assessee, I am of the considered opinion that the AO rightly made the impugned addition of*

Rs.3,85,09,900/- warranting no interference of the appellate authority.

9.5 *Thus, the ground of appeal raised by the assessee on this issue is dismissed.”*

9. It is transpired from the record that there was no representation on behalf of the assessee before the lower authorities. The reasons for non-appearance are stated to be that circumstances were beyond the control of the assessee and the assessee could not represent her case effectively. It was stated before authorities below that the assessee had been engaged in the business of distributorship of milk products of Amul Milk and Mother Dairy. The AO rejected the books of accounts without assigning any reason as to how the accounts do not inspire confidence. Therefore, looking to the totality of the facts of present case and to sub-serve the principle of natural justice, we are of the view that the assessee should have been granted sufficient opportunity to represent her case. Therefore, the impugned order is set aside and the assessment is restored to the file of AO to frame the assessment afresh. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 15th March, 2024.

Sd/-

**(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI