

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.46/Hyd/2024		
Assessment Year: 2021-22		
CELKON IMPEX PRIVATE LIMITED, HYDERABAD.	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Mohad. Afzal, Advocate.	
Revenue by:	Shri Jeevan Lal Lavidiya, CIT-DR	
Date of hearing:	13.03.2024	
Date of pronouncement:	19.03.2024	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2021-22 arises from the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 19.10.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, "the Act"),

2. The grounds raised by the assessee reads as under :

"1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner erred in dismissing the appeal of the assessee without issuing notice u/s 250 of the IT Act, in other words no opportunity is given by the learned Commissioner to the assessee to submit the clarifications

in respect of additions made. Therefore, the order of the Appellate Commissioner is in violation of Principles of Natural Justice, therefore, the order u/s 250 of the IT Act, is to be held as null and void.

3. The learned Commissioner erred in confirming the order of the Assessing Officer wherein an addition of Rs.1,49,92,870/- is made as undisclosed business income u/s 28 of the IT Act.

4. The learned Commissioner erred in confirming the order of the Assessing Officer wherein an addition of Rs.1,91,46,613/- is made as unexplained expenditure of the assessee u/s 69C of the IT Act.

5. The learned Commissioner erred in confirming the addition of Rs.14,87,98,367/- made u/s 69C without giving further opportunity to the assessee to clarify with the Trade creditors.

6. The learned Commissioner erred in confirming an addition of Rs.4,27,60,157/- in spite of producing confirmation letters and other details before the Commissioner.

7. The learned Commissioner erred in not considering the documents submitted for his verification in support of the grounds of appeal, therefore, erred in confirming the addition of Rs.22,56,98,007/-, therefore, violated provisions of principles of natural justice and therefore, the order is to be held null and void.

8. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”

3. The brief facts of the case are that assessee has filed its return of income for the A. Y. 2021-22 admitting net taxable income of Rs.1,83,83,370/- on 15-03-2022. The case was selected for complete scrutiny under CASS. A notice u/s.142(1) of the Act dtd. 07.10.2022 was issued, for which assessee had replied on 05.12.2022. The assessee's submission was considered and found to be acceptable. However, on verification of return of income and other details submitted by the assessee, Assessing Officer has pointed out certain discrepancies. Hence, the Assessing Officer asked for an explanation for the same by sending several notices and so many giving opportunities as per para 4.1. of the assessment order. However, the assessee did not furnish complete details called for and submitted partial details piecemeal and that too with much delay. Even to the

show cause notice dtd.16.12.2002 issued proposing variations to the returned income, the assessee has not replied till date. Hence, taking into consideration the details/data available with the Department and the submissions made by the assessee earlier, Assessing Officer completed the assessment interalia making various additions. Thus, Assessing Officer passed assessment order u/s 143(3) r.w.s 144B of the Act determining the total income of the assessee at Rs.24,40,81,377/- on 29.12.2022.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who granted partial relief to the assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. Before us, it was the contention of the Ld.AR for the assessee that the Ld. CIT(A) had passed the order without considering the documents filed by the assessee during the appellate proceedings and has passed a non-speaking and cryptic order. Ld.AR for that purposes has drawn our attention to the decision passed by the ld.CIT(A), which reads as under :

“Decision :

This appeal is against the assessment order passed u/s 143(3) r.w.s. 144B of the Act dated 29.12.2022. The following additions were made in the said order:

Section 28: Undisclosed business income on account of purported difference in sales made to Celekt Gadgets LLP and Conekt Gadgets LLP - Rs.1,49,92,870/-

Section 69C: Unexplained expenditure on account of purported differences in purchases made from Flash Solutions Private Limited and ConektGadgets LLP - 1,91,46,613/- Section 69C: Unexplained expenditure on account of

purported non-receipt of confirmations in respect of Trade Payables (unverified Trade Payables) -Rs. 14,87,98,367/- Section 68: Unexplained Cash Credits in respect of Unsecured loans and advances received during the year – Rs. 4,27,60,157/-. The common plea taken by the appellant before me is that:

5. The NaFAC erred in solely placing reliance on the response received u/s 133(6) of the Act, by ignoring the details furnished by the Appellant, material available on record including those reported in GST/ AIS/ TIS/ 26AS.

6. Without prejudice, the Appellant was not provided adequate opportunity of cross examination of various parties.

Before me, the appellant has **attached some documents for consideration, which are not considered by me since in my opinion,** the AO has given sufficient opportunity to the appellant to submit these documents, and the appellant has, for reasons best known to him, not even replied to the final show cause given by the AO.

I observe from the order that the AO has done a very detailed study of the case, and has made the additions after issuing 133(6) notices, and after taking a very balanced approach.

It is also observed that the final show cause issued by the AO has sought for a reply from the appellant on or before 20.12.2022, and has waited till 29.12.2022 before he has passed the assessment order.

The AO mentions as:

The assessee vide notice u/s.142(1) dtd. 07.10.2022 was requested to furnish various details mentioned therein. The assessee remained non-compliant to this notice. Hence, 'No response letter' seeking assessee's response to the above notice was sent to the assessee by this office on 14.11.2022 and compliance was requested by 19.11.2022. Another 'No response letter' dtd.11.11.2022 issued by the NaFAC vide physical mode (Indian Speed Post) was served on the assessee on 18.11.2022. The assessee made first part compliance to the notice u/s.142(1) on 23.11.2022 and thereafter on 24.11.2022 and 28.11.2022. As the assessee has not fully complied to the notice u/s.142(1) dtd. 07.10.2022, hence a further notice u/s.142(1) dtd. 02.12.2022 was issued to the assessee to submit the balance details. **The assessee made partial replies on 05.12.2022 and 13.12.2022.** Thus it can be seen that the assessee did not furnish complete details called for and submitted partial details piecemeal and that too with much delay. Even to the show cause notice dtd.16.12.2002 issued proposing variations to the returned income, the assessee has not replied till date. Hence, taking into consideration the details/data available with the Department and the submissions made by the assessee earlier, the assessment is completed on the following lines I do not find any substance in the submissions of the appellant.

Accordingly, I deem it fit not to interfere with the additions, and hence the additions stand.

However, with regard to the addition under the head of Trade Payables, the appellant submits as:

Without prejudice, the NFAC erred in making a double addition u/s 68 of the Act to the extent of Rs. 30,17,688/- in respect of unverified Trade Payables to Flash Distribution Private Limited, which was already a subject matter of addition u/s 69C of the Act.

The AO is directed to look into this point, and provide necessary correction, if indeed there has been a double addition.

Calculation of interest is consequential.

With regard to the ground taken on initiation of penalty proceedings, I refuse to adjudicate, since penalty is yet to be imposed.

THE APPEAL IS HENCE PARTLY ALLOWED.”

7. It was submitted by Ld.AR that the Ld. CIT(A) had failed to exercise the powers vested in it under the provisions of the Act. It was submitted that the order was passed by the Ld. CIT(A) is without any reason and consideration of the document filed by the assessee.

8. Per contra the Ld. DR relied upon the order passed by the lower authorities.

9. We have heard the rival contentions of the parties and perused the material available on record including the order passed by the lower authorities. It is apparent from the order passed by the Ld. CIT(A) that the assessee had filed the document justifying the claim before the first appellate authority, however, the first appellate authority without giving any reasons has failed to consider the documents and have upheld the order passed by the Assessing Officer. In our view, there is a solemn responsibility vested in Ld. CIT(A) and the Ld. CIT(A) is duty-bound to consider the documents filed by the assessee. The Ld. CIT(A) has a coterminous power to decide the issue. In the present case, the Ld. CIT(A) has failed to exercise its power and has wrongly decided the issue by passing cryptic, non-reason and nonspeaking order. The finding of the Ld. CIT(A) at page 6 of order holding that

“Accordingly, I deem it fit not to interfere with the additions, and hence the additions stand.” was not supported by any reason whatsoever.

10. In the light of the above, we set aside the order passed by the Ld. CIT(A) to the file of the Ld. CIT(A) with a direction to decide the matter afresh after affording the opportunity of hearing to the assessee. The assessee shall be at liberty to file documents, if any, as required for proving its case and the Ld.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the Ld.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Ld.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Ld.CIT(A) for fresh adjudication. Thus, the grounds of the assessee are allowed for statistical purposes.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 19th March, 2024.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 19th March, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	CELKON IMPEX PRIVATE LIMITED, Hyderabad, H.No.1-65/242, Ground Floor, Guttalabegumpet, Telangana – 500033.
2	The Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad.
3	Pr1.CIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order