

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

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.3116/Del/2023
(ASSESSMENT YEAR 2017-18)**

Income Tax Officer Ward-28(5) Delhi	Vs.	Rahul Pokhriyal 336, Pocket-1 Sector-1, Dwarka Delhi-110075 PAN-AROPP7555J
(Appellant)		(Respondent)

**C.O. No.149/Del/2023
(Arising out of ITA No.3116/Del/2023)
(ASSESSMENT YEAR 2017-18)**

Income Tax Officer Ward-28(5) Delhi	Vs.	Rahul Pokhriyal 336, Pocket-1 Sector-1, Dwarka Delhi-110075 PAN-AROPP7555J
(Cross Objector)		(Respondent)

Assessee by	Dr. Rakesh Gupta, Adv. & S. Deepesh Garg, Adv.
Respondent by	Ms. Mayuri, Sr. DR

Date of Hearing	25/04/2024
Date of Pronouncement	03/05/2024

ORDER**PER S.RIFAUR RAHMAN, AM:**

This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“Ld. CIT(A)”, for short], dated 31/08/2023 for Assessment Year 2017-18. Whereas the Assessee has filed Cross Objection.

2. The grounds raised by the Revenue are as under:

“ Ld. 1 Ld. CIT(A) erred in allowing relief to the Assessee by directing to charge tax @ 30% with surcharge of 25% as against the tax charged by the AO at 60% with surcharge of 25%. The decision given by the Ld. CIT(A) is not acceptable. Although, it is correct that the provisions of section 115BBE of the Act as amended were brought into the Act by Taxation, Laws (Second Amendment) Act, 2016, however, the said amendment has been made effective from 01.04.2017 and hence applicable to the impugned assessment year i.e. AY. 2017-18. Therefore, the amendment in question is not retrospective as claimed by the assessee and allowed by Ld CIT(A). Though, the intention of the Legislature was to bring the amendment was to tax the unexplained assets after demonetization but the amendment covers all sections from 68 to 69D of the Act irrespective of whether the undisclosed assets found/taxed are prior to or after the demonetization period.”

Grounds of Cross Objection filed by the assessee.

“1. That the Learned Commissioner of Income Tax has erred in sustaining the entire addition of Rs. 1,73,11,900/- made by the Assessing Officer considering the deposit of cheque and cash for the full year as made during the demonetization period, though the same is for before | during | and post demonetization period of the year.

2. *That the assessee craves indulgence to amend, alter, add or modify any or all the grounds of cross objection and/or take additional grounds of cross objection.”*

Additional Grounds of Cross Objection No.3

3. *That the assessee has not been above to avail of the opportunities of hearing before the Ld. Authorities below, it is therefore, prayed that the assessee be given a chance to present its facts of the case before the AO, and hence the proceedings may please be restored before the AO.*

3. At the time of hearing, it is brought to our notice that assessee has filed his return of income on 29/07/2017 declaring total income of Rs.3,54,540/-. The case was selected for limited scrutiny under CASS for the reason that large cash deposits during demonetization period and abnormal increase in sales with decrease in profitability as compared to preceding previous year. The notices u/s 143(2) and 142(1) were issued and served along with specific questionnaire. In response, the assessee has not furnished any information after several notices issued to the assessee, since, there is no response, final show cause notice was issued u/s 144 of the Act and even then no compliance from the assessee. Accordingly, the assessment was completed u/s 144 of the Income Tax Act, 1961 ('the Act' for short) with the addition u/s 69A of the Act to the extent of Rs.1,73,11,900/-.

4. Aggrieved with the above order, the assessee preferred the appeal before the NFAC, Delhi. After filing the appeal, several notices were issued to the assessee from NFAC and even then assessee has not complied to the various notices. Since, non compliance from the assessee, the appeal was decided on the basis of information available on record and, accordingly, the same was partly allowed with certain relief u/s 115BBE of the Act.

5. Aggrieved with the above order, the Revenue is in appeal before us, raising issue u/s 115BBE to the extent of relief granted by the First Appellate Authority. At the same time, the assessee also filed Cross Objection before us against the additions made u/s 69A of the Act.

6. After considering the rival submissions and material placed on record, we observed that the assessee has not complied with the various notices issued by the Assessing Officer as well as First Appellate Authority. The conduct of the assessee in not complying to the various notices issued by the Lower Authorities and not

cooperating with the Lower Authorities to assess his income appropriately. Even before us, the assessee has not filed the appeal but filed the ground only under Rule 27 of ITAT Rules. This shows the assessee is either ignorant or not having proper guidance. In our view, the assessee needs one more opportunity to meet the overall justice. Since, no representation was made before the Lower Authorities, this matter should go back to the Assessing Officer to reassess the income *de novo*. Accordingly, we direct the assessee to cooperate with the Assessing Officer by filing the relevant information as called for by the Assessing Officer as per original notices issued u/s 142(1) of the Act or as the case may be, the Assessing Officer may ask for the further information to reassess the income. The assessee is direct to submit the information without taking unnecessary adjournments. Accordingly, we remit this issue back to the file of Assessing Officer to reassess the income *de novo* with the direction to give proper opportunity of being heard to the assessee. Accordingly, the appeal filed by the Revenue and C.O. filed by the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue and C.O. filed by the assessee are allowed for statistical purposes.

Order pronounced in open Court on 03rd May, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 03/05/2024

Pk/sps

Copy forwarded to:

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

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI