

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

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No. 3239/Del/2023
(Assessment Year : 2017-18)

Rohit Bansal A-4/136, Paschim Vihar, New Delhi-110 063 PAN No. AOPPB 5037 D (APPELLANT)	Vs.	Income Tax Officer Ward – 45(7) Delhi (RESPONDENT)
---	-----	--

Assessee by	Shri Pranshu Singhal, C.A.
Revenue by	Shri P. N. Barnwal, CIT-D.R.

Date of hearing:	02.05.2024
Date of Pronouncement:	08.05.2024

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER :

This appeal by the assessee is directed against the National Faceless Appeal Centre (NFAC) order dated 18.09.2023 of the Commissioner of Income Tax (Appeals), New Delhi [hereinafter referred as 'CIT(A)'] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1056198965(1) relating to the Assessment Year (A.Y.) 2017-18 and arises out of the assessment order under section 143(3) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'] .

3. The relevant facts as culled from the material on records are as under :

4. The assessee engaged in the business of trading of Iron and Steel sheets and moulds. Assessee filed his return of income on 07.11.2017 declaring income of Rs.13,95,520/-. The case was selected for 'Complete Scrutiny' through CASS. The e-assessment proceedings were initiated by issuance of notice under section 143(2) of the Act through ITBA. On the basis of AIR/IDS information available and considering the bank account statement received from the banks in response to notice issued under section 133(6) of the Act. It is revealed that assessee had deposited cash during the demonetization period in his bank account as per the details given below:

Sr. No.	Name of the Bank	Bank Account No.	Cash deposits
1.	Axis Bank Ltd.	913030021390708	Rs.1,67,39,000/-
2.	IDBI Bank Ltd.	183102000005166	Rs.7,50,000/-

5. The AO concluded the scrutiny proceedings by bringing to tax the above cash deposits as unexplained income of the assessee and addition of Rs.1,74,89,000/- was determined. The income determined under section 68 of the Act is taxed under section 115BBE of the Act @ 60% plus surcharge @ 25% of such tax.

6. Aggrieved by the order of the AO, assessee carried the matter before CIT(A) under section 250 of the Act. Learned CIT(A) fixed the various dates but assessee seeks adjournments and decide the appeal and confirmed the AO's order by order dated 18.09.2023, against which this appeal has been filed by the assessee before the Tribunal and has raised the following grounds:

- “1. *On the facts and circumstances of the case, the assessment order passed by the Ld. Commissioner of Income Tax (Appeals) (CIT(A)) is bad both in the eyes of law as well as on the facts of the case.*
2. (i) *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in passing the order without giving assessee an opportunity of being heard in violation of the principle of natural justice.*

(ii) *That the non-appearance before the Ld. CIT(A) was due to reasons beyond the control of the assessee.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the assessment of income at Rs.1,88,84,520/- as against the returned income of Rs.13,95,520/-.*
4. (i) *On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of Rs.1,74,89,000/- under section 69A r.w.s 115BBE of the Act on account of cash deposited in the bank account during the period of demonetization.*

(ii) *That the Ld. CIT(A) has erred both on facts and in law in confirming the aforesaid addition of cash deposits which has already been declared in the return of income as part of total sales and that it amounts to double taxation of the same amount.*

5. (i) *Without prejudice to the above and in the alternative, even assuming for the sake of an argument, additions were warranted under section 69A of the Act then too, demand computed in accordance with rate specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016 is wholly misconceived.*
- (ii) *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the amendment made by the Taxation Laws (Second Amendment Act, 2016 was w.e.f. 1.4.2017 and thus applicable from financial year 2017-18 onwards and not from the financial year 2016-17 relevant to assessment year 2017-18 and therefore, demand computed was not only arbitrary but highly excessive.*
- (iii) *That the learned Commissioner of Income Tax (Appeals) ought to have therefore applied the income tax at best @ 30% of the income determined under section 69A of the Act and not at the rate of 60% as specified in section 115BBE of the Act as amended by Taxation Laws (Second Amendment) Act, 2016.*
- (iv) *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that substitution of provisions by Taxation Laws (Second Amendment) Act, 2016 w.e.f. 1.4.2017 was not retrospective in nature but was prospective and only application from financial year 2017-18 relevant to assessment year 2018-19.*
6. *That the appellant craves leave to add, alter or amend any of the grounds of appeal.”*

7. Before us, learned counsel for the assessee submitted that AO passed order without considering the submissions of the assessee. Learned CIT(A) has also passed the order without giving assessee an opportunity of being heard in violation of the principal of natural justice. Before us, the learned counsel for the assessee therefore submitted that one more opportunity be

granted to assessee to plead his case and further he undertakes to appear before the authorities and furnish all the required details to support his contentions.

8. Learned DR on the other hand objected to the request made by learned counsel for the assessee for seeking second innings. He further submitted that no material has been placed by the assessee in support of his case.

9. We have heard the rival submissions and perused the material available on record. The perusal of CIT(A) order reveals that CIT(A) has passed order without deciding the issue on merits. Further no finding has been given by CIT(A) on the submissions made by the assessee before him. Sub Section (6) of Section 250 of I. T. Act mandates the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. In view of these facts, we set aside the impugned order of CIT(A) dated 18.09.2023 and restore the issue to the file of CIT(A) for re-adjudication of the issues in accordance with law after granting sufficient opportunity of hearing to both the parties. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the

assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 08.05.2024

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

Date:- 08.05.2024

Priti Yadav, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI