

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

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER**

**ITA No.679/Del/2024
(ASSESSMENT YEAR 2012-13)**

Mohd Naseem Ansari Village Hatmabad Post-Hatmabad Bulandshahr Uttar Pradesh-203001 PAN-AGBPA1560G (Appellant)	Vs.	Income Tax Officer Ward-2(3)(1) Bulandshahr (Respondent)
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Assessee by	Shri Nitin Gulati, Adv. and Shri Atul Sagar, Adv.
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	07/05/2024
Date of Pronouncement	15/05/2024

ORDER

PER S.RIFAUH RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 15/12/2023 for Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

"1. That the learned A.O/Respondent has grossly erred both on facts and in law. in computing the income of the appellate in order of assessment dated 24/03/2023 u/s 144 r.w.s 263 of the I.T. Act at Rs.24,37,370/-

against the returned income of Rs. 1,90,470/-.Learned Commissioner appeals has also erred in upholding the same.

2. That the assessment thus framed is, otherwise, bad in law and is totally unsustainable, in as much as the same has been framed by passing Exparte order. That Ld. A.O. Respondent in doing so observed that "Neither compliance/report was not received from the concerned VU nor was any compliance received from the appellant In spite of all the materials being submitted before the Jurisdictional Assessing officer at the time of Assessment. Learned Commissioner appeals has also erred in upholding the same.

3. That the Learned A.O./ Respondent completely erred in treating cash deposit of Rs.15,16,900/- as unexplained money u/s 69A of the IT Act, 1961, even when it was explained that the assessee was engaged in trading of waste Maggie noodles during the FY-2011-12 and cash received being deposited in bank is solely from the sale of a Maggi noodles also the amount received from each customer is below the specified limit of Rs 20,000/- as specified in Sec. 40A(3) of 1. T. Act which is allowed as per income tax. Learned Commissioner appeals has also erred in upholding the same.

4. That the Learned A.O. completely erred in treating Loan taken of Rs.7.30,000/- as Unexplained cash credit u/s-68 of the LT. Act 1961. Learned Commissioner appeals has also erred in upholding the same.

5. That Learned commissioner appeals has erred in passing the order u/s 250 of the Income Tax Act without considering the documents submitted at the time of hearing.

6. That The Order By Commissioner (Appeals) Is An Unsigned Order Which is No Est As It Is An Unsigned One.

7. That No Service Of Order By Commissioner (Appeal) Has Been Effected to The Appellant.

8. That Order u/s 250 of the Income Tax Act 1961 has been passed in violation of Principles of natural justice as request for adjournment in response to notice dated 11.12.2023 was filed on 14.12.2023 which was not considered by Learned Commissioner Appeals before passing the order.

3. At the outset, the Ld. AR briefly submitted the facts in this case and agreed that Assessing Officer sent several notices, but assessee could not make submission before him, therefore, proceeded to make the assessment u/s 144 r. w. section 263 of the Act, 1961 ('the Act' for short). Further, he submitted that the case was selected for scrutiny u/s 147 of the Act and completed the same accepting the income declared by the assessee. However, Ld. CIT has reviewed the assessment order and found that assessee has taken certain loan and not verified by the Assessing Officer. Therefore, the issue was remitted back to Assessing Officer to redo the assessment. The assessee has not utilized the opportunity given by the Assessing Officer and agreed that several opportunities were given by the Ld. CIT(A) as well and assessee could not represent his case due to non-receipt of the notices, however, he submitted that the Ld. CIT(A) has proceeded to dismiss the appeal filed by the assessee *in limine* without deciding the issue on merits. He prayed that this issue may be remitted back to file of jurisdictional AO for proper adjudication.

4. On the other hand, Ld. DR relied on the order of the lower authorities and submitted that assessee has not utilized the opportunity provided by Assessing Officer as well as Ld. CIT(A). However, he agreed that the order passed by Ld. CIT(A) is *ex-parte* order.

5. Considered the rival submissions and material placed on record. On a perusal of the assessment order and First Appellate Authority order, we find that even though the Assessing Officer and Ld. CIT(A) provided opportunity on several occasions, assessee could not appear nor complied to the notices issued. We observed that Ld. CIT(A) dismissed the appeal filed by the assessee based on the information available on record.

6. Considering the totality of facts and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Accordingly, in the interest of justice, we are of the view that this matter should go back to the file of the jurisdictional Assessing Officer for *denovo* verification and re-assessment.

Assessee shall cooperate with the proceedings before the Assessing Officer without taking unnecessary adjournments. Needless to say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Assessing Officer accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 15th May, 2024.

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated:15/05/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI