

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

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

**ITA No.2986/Del/2023
(ASSESSMENT YEAR 2017-18)**

Arpit Consultants & Associates C/o CA Anupam Sharma, 02, Victoria Garden, Victoria Park Road, Near Jail Chungi, Meerut PAN-ABGFA6125M	Vs.	National Faceless Appeal Centre (NFAC)
(Appellant)		(Respondent)

Assessee by	Shri Dinesh Kumar, CA & Shri Saurabh Panwar, CA
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	09/05/2024
Date of Pronouncement	17/05/2024

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 25/08/2023 for Assessment Year 2017-18.

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

"1. The Ld. CIT(A) is not justified for confirming the addition of Rs. 30,00,000/- into the Income of appellant and also confirming the demand of Rs.30.84,723/- as the assessee is a Partnership firm which is engaged in the business of real state consultancy and other consultancy services and the total Amount of addition was the amount of capital introduced by the partners of the firm. Hence it cannot be considered as Income of the Firm.

2. That the Ld. CIT(A) in the order stated that "The three stamp papers used for making the partnership deed have been issued in different which shows that forming a partnership firm comprising of 16 partners is clearly an afterthought". In this matter it is stated that the date mentioned by the CIT(A) is the date on which the stamp vendor purchased the stamp paper from the government and he provided the stamp papers available with him hence it has nothing to do with the assessee. However, on the backside of the stamp paper, there is proper stamp of the stamp vendor which clearly shows that the date on which the stamp paper is issued to the assessee by the stamp vendor is 11/04/2016 i.e. the date on which partnership is formed and also they are serially numbered from 232-235. The same can also be verified from the registrar details but the Ld. CIT(A) without applying his mind and verifying the details merely copy pasted the decision of the Ld. AO.

3. Further the Ld. CIT(A) mentioned that the partnership firm is not registered, here we want to draw your kind attention towards the provisions of Part-VII of the Indian Partnership Act, 1932 wherein it is clearly stated that there is no compulsion on the Partnership firm to itself Registered. Also, the Income Tax Department had issued PAN Card on the same partnership deed.

4. The Ld. CIT(A) in the order stated that "In the KYC documents of the bank, only details of three partners has been given which shows that the money belonged to family members and later on to justify cash deposits, 16 partners were shown in the partnership deed. In this matter it is stated that the Ld. CIT(A) clearly failed to verify the partnership deed in which it is clearly mentioned in "Point-5 on Page-6" that the authorization for opening and other functioning of Bank Account will be done by the First Party, Fourth Party and Seventh Party i.e. Shri Arpit Sharma, Smt. Shashi Sharma and Shri Arun Kumar Sharma.

5. Also, the Ld. CIT(A) stated that "The assessee submitted copy of ITR and bank accounts in respect of only 4 partners who are family members. As already mentioned, the Ld. CIT(A) merely copy pasted the Assessment Order without using his mind because the assessee submitted copy of ITR and bank accounts in respect of 4 partners while filing the reply before the Ld. AO whereas before the Ld. CIT(A) the assessee submitted the Copy of ITR of 9 partners and not 4 partners.

6. The Ld. CIT(A) stated that the assessee has submitted that the amount of Rs 2,00,000/- each was held by the partners as their personal savings and when demonetization was announced, partners mutually decided to contribute the same in the firm. In this matter it is imperative to state that though, the assessee never submitted this reply before the Ld. CIT(A). However, before the Ld. AO the assessee submitted that "the amounts deposited during the period are related to the Capital Contribution of Rs. 2,00,000/- per partner the firm. The firm have 16 partners who contributed Rs. 32,00,000/- as capital out of which Rs. 30,00,000/- has deposited into Firms Current Account". It clearly indicates that the assessee never stated that when demonetization was announced, partners mutually decided to contribute the same in the firm. This all shows that the judgment was passed with a predetermined set of mind.

7. The Ld. CIT(A) stated that "As per the version of the assessee, the partnership firm was formed on 11/04/2016, however no bank account in the name of the firm was opened till 24 Nov 2016 whereas the clause-7 of the partnership deed clearly states that no expenses can be incurred without the cheque". In this matter it is stated here that the Ld. CIT(A) failed to read the whole Clause-7 of the Partnership Deed in which it is mentioned that no expenses can be incurred without the cheque and no income will be received without cheque however if the expenses or income are upto Rs. 1,00,000/- then the same can be incurred without the cheque by the First, Fourth and Seventh Party.

8. The Ld. CIT(A) stated that "Even the firm was formed on 11/04/2016, the assessee did not apply for the PAN card and the same was applied on 17/11/2016 which clearly indicates that partnership deed produced is an after thought and has been created just to justify the cash deposit". In this matter it is stated here that PAN was applied to open the Current Account of the Partnership Firm as it is not possible to open a bank account without PAN. Also, it is not mandatory to immediately apply for a PAN after formation of partnership firm as PAN is required for tax compliances and the same is applied before filing of return.

9. Further, it is stated that without partnership deed PAN cannot be applied and the PAN of the Partnership Firm was issued by the Income Tax Department dated 22-11-2016 then how is it possible that the partnership deed is prepared when the case was selected for scrutiny. As, the case was selected for scrutiny dated 21/09/2018 ie almost after 2 years of issue of PAN Card.

10. The Ld. CIT(A) stated that the assessee has utilized the capital for purchase of Toyota Car in FY 2017-18 for Rs. 25,00,000/-. It is hard to believe a business practice where a firm having a capital of 32 Lakhs invest 25 Lakhs for purchase of a luxury car especially when the business is newly set up and does not invest the same in the business. In response to the same it is submitted that, as the assessee carries on business of real estate consultancy, it is the need of business for purchase of a motor-vehicle because the same is required to take the client for the site visit to show the property sometimes to another city as there is no site nearby the office of the assessee and for various other similar reasons. Hence, the purchase of the car is the investment in the business. Also, according to various judgements of the Hon'ble Supreme Court it has been held that it is not open to department to prescribe what expenditure assessee should incur and in what circumstances he should incur that expenditure.

11. That the Ld. CIT(A) did not consider the reply submitted by the assessee and with a pre-determined set of mind and in a hurriedly manner just dismissed the appeal by merely copying and pasting the judgement of assessment order. This can be verified from the assessment order and the Order u/s 250 as the judgement of the Ld. AO from Last Para of Page 2 to Third Para of Page 7 of the assessment order is exactly copied and pasted line by line in the Order u/s 250 from Point 4.2 of Page 8 to Page 12.

12. That orders passed by Ld AO and id CIT-A are bad in law as Ld AO passed the order in strangulation of principles of natural justice (audi altrem partem) which makes the entire proceedings nullity (coram non judice) in eyes of law.

13. That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”

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 147 of the Act, 1961 ('the Act' for short). Further, he 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.

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 Assessing Officer for denovo verification and 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 17th May, 2024.

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 17/05/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI