

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

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

**ITA No.3373/Del/2023
(ASSESSMENT YEAR 2011-12)**

Deepak Agarwal C-332, Gaur Homes Govindpuram Ghaziabad-201013 (U.P.) PAN-AEHPA3806K	Vs.	Income Tax Officer Ward-1(2), Ghaziabad
(Appellant)		(Respondent)

Assessee by	Ms. Radhika Chauhan, CA
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	08/05/2024
Date of Pronouncement	/05/2024

ORDER

PER S.RIFAUR 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 16/08/2023 for Assessment Year 2011-12.

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

“1. That the order of Ld. A.O is bad in law and against the facts and circumstances of the case and hence is not sustainable.

2. That the Ld. A.O had erred in disposing the assessment without issuing notice u/s 143(2) of the Income Tax Act, 1961.

3. That the Ld. A.O had erred in disposing the assessment u/s 144 without considering the fact that assessee had filed return u/s 139(1) of the Income Tax Act 1961.

4. That on facts and circumstances of the case and in Law, the Ld. A.O. has erred in making the addition for Rs. 24,07,500.00 under the head unexplained credit, without considering the replies submitted by the assessee.

5. That on facts and circumstances of the case and in Law, the Ld. A.O. has erred in making the addition for Rs. 24,07,500.00 without giving reasonable opportunity.

6. That on facts and circumstances of the case and in Law, the Ld. A.O. has erred in making the addition for Rs. 24,07,500.00 on the presumption that replies submitted are of very routine nature.

7. That the assessee had reserved the right to a add/modify/delete any ground of appeal at the time of hearing.

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 22nd May, 2024.

Sd/-

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

Dated: 22/05/2024

Pk/sps

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI