

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No. 1123/Del/2024
(Assessment Year: 2020-21)**

World of Shalon Restaurants Pvt. Ltd, N-18, 1 st Floor, N. Block Market, Greater Kailash, Part-1, Delhi (Appellant)	Vs. ITO, Ward-13(3), Delhi (Respondent)
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PAN:AADCJ0174C

Assessee by :	Shri Yudhisthir Mehtani, CA
Revenue by :	Shri Amit Koatch, Sr. DR

Date of Hearing	27/05/2023
Date of pronouncement	29/05/2024

ORDER

PER SHRI S. RIFAUH RAHMAN :

1. This appeal has been filed by the Assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 21.02.2024 for Assessment Year 2020-21.

2. Brief facts of the case are, the assessee is engaged in the business of retail trade of liquor by purchasing liquor from various entities and sells it to be customers through over the counter sales. The assessee filed its return of income on 17.12.2020 declaring loss of Rs. 51,25,030/- and same was processed u/s 143(1) of the Income Tax Act, 1961 (for short 'the Act'). The case was selected for complete scrutiny to verify high liabilities as compared to low income/ receipts and low income from TCS receipts. Accordingly, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response the Id AR

of the assessee uploaded the information on 28.01.2022 along with other various details as called for.

3. During the assessment proceedings the AO observed from the financial statements submitted by the assessee and observed that there are mismatch in the revenue operations declared by the assessee and TAS data available with the revenue and he observed that there is a difference of Rs. 4,60,72,877/-. Similarly, he also observed difference in total purchase declared by the assessee and TCS data available with him. The AO observed that assessee has uploaded its submission vide letter dated 19.09.2022. However, the assessee remain silent on the points raised in the show cause notice dated 16.09.2022. Accordingly, he proceeded to make the additions as under:-

Sl. No.	Description	Amount (in INR)
1	Loss as per return of income filed	(-) 51,25,030
2	Income as computed u/s. 143(1)(a)	(-) 51,25,030
3	Variation in respect of issue of difference in purchase	2,91,60,447
4	Variation in respect of issue of difference in sales	4,60,72,877
5	Total Income determined	7,01,08,294
6	Earlier year losses brought forward	(-) 1,06,81,285
7	Brought forward unabsorbed depreciation	(-) 70,30,126
8	Total Assessed Income	5,23,96,883

4. Aggrieved with the above order, the assessee preferred appeal before National Faceless Appeal Centre (NFAC), Delhi and filed detail submissions along with additional evidences under Rule 46A. After considering the detailed submissions and the additional evidences filed by the assessee under Rule 46A, Ld. CIT(A) rejected submissions and the additional evidences by observing as under:-

"In the petition filed for admission of additional evidence under Rule 46A dated 21/01/2024, at Para-4, the appellant has stated that the appellant was unable to reconcile the sale and purchase transactions

reported under TAS/TCS data with the profit and loss account and consequently, was unable to submit the relevant details/documents to substantiate the facts. In this connection, it must be stated that TAS/TCS are the primary documents that are available readily in the Income Tax Portal and by the deductees who have made the TDS. These are the primary documents on which, the profit and loss account is required to be prepared. This explanation of the appellant shows that the final accounts of the appellant was not prepared based on the real and actual data/journal. Therefore, the appellant failed to reconcile and explain the difference to the satisfaction of the AO.

In the light of the above observation, I am the appellant has not evidence uploaded at the time of appellate satisfied the conditions provided under Rule 46A. Hence the additional evidence uploaded is not admitted."

5. Aggrieved with the above order, the assessee is in appeal before us raising following grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A), NFAC, has erred in law and on facts in not accepting the petition filed by the assessee under Rule 46A and that too without any basis and without appreciating the facts and circumstances of the case.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A), NFAC, has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,91,60,447/- on account of alleged suppressed purchases being difference between purchases as reported in TCS and as shown in Audited Account and that too without any basis and without appreciating the facts and circumstances of the and without appreciating/considering the pleadings/details and evidences filed by the assessee and without observing the principles of natural justice and has erred in not considering the purchase of goods without TCS.

3. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.2,91,60,447/- on account of alleged suppressed Purchases is bad in law and against the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A), NFAC, has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.4,60,72,877/- on account of alleged difference in sales being as reported in statement of accounts and as per TAS data available with the department and that too without any basis and without appreciating the facts and circumstances of the and without appreciating/considering the pleadings/details and evidences filed by the assessee and without observing the principles of natural justice and the impugned addition led to duplication of Sales.

5. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.4,60,72,877/- on account of alleged difference in Sales is bad in law and against the facts and circumstances of the case.*
6. *That in any case and in any view of the matter, Ld. CIT(A) ought to have quashed the impugned assessment order dated 26.09.2022 which is illegal, bad in law, void ab-initio and against the facts and circumstances of the case and in gross violation of principles of natural justice and in violation of provisions of section 144B and barred by limitation also.*
7. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction for making disallowance/additions and in dealing and deciding those issues which could not have been so done by him in view of the specific nature of aspects mentioned in para 1 page 1 of the assessment order for which the case of the appellant was selected for scrutiny.*
8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*
9. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*
6. At the time of hearing the Ld. AR only made the submissions on ground No. 1 and submitted that the Ld. CIT(A) has confirmed the receipts of additional evidences under Rule 46A and rejected the plea of the assessee with the observation that TAS/ TCS are the preliminary documents that are readily available in the income tax portal and by the deductees who have made the TDS. These are the preliminary documents on which profit and loss account is require to be prepared. With the above observations, Ld. CIT(A) rejected the above explanation submitted by the assessee and he prayed that the additional evidences goes to the root of the matter and thus needs to be verified meantime the information available with the Income Tax Department was not available readily with the assessee and it is fact on record that the assessee has not prepared its financial statement with the above said

information. Now, the assessee has all the relevant information in support of the financial data on which the financial statements were prepared and the additional evidences will assist the assessment authorities to appreciate the evidences filed by the assessee. Accordingly, he prayed that this issue may be remitted back to the jurisdictional Assessing Officer who had no opportunity to verify the detailed submissions which are available now as additional evidences under Rule 46A.

7. On the other hand the Id DR has no specific objection to the submission made by the assessee and he has no objection to remit this issue back to the file of jurisdictional Assessing Officer.

8. Considered the rival submissions and material placed on record, we observe that the assessment was completed with the incomplete data which were not available with the AO during the assessment proceedings and also assessee has failed to submit the relevant information during the assessment proceedings. The assessee has compiled and reconciled the relevant data relating to TAS/ TCS and filed the relevant information before the Ld. CIT(A). We find that the Ld. CIT(A) has grossly rejected the additional evidences without clear and proper reasons. Therefore, we deem it fit and proper to remit this issue back to the file of the jurisdictional Assessing Officer to consider the additional evidences filed by the assessee under Rule 46A and redo the assessment denovo after giving proper opportunity of being heard to the assessee for the sake of complete justice. Accordingly, ground No. 1 raised by the assessee is allowed for statistical purposes.

9. With regard to other grounds of appeal, no submissions were made at this stage and we do not wish to adjudicate these issues at this stage.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 29/05/2024.

-Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

-Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 29/05/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi