

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH  
MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

I T A. No. 498/MUM/2024  
(A.Y. 2020-21)

Vasntkumar Kantilal Shah 812, Bombay Market Apartment, Tardeo Road, Mumbai-400034.	Vs .	NFAC, Delhi New Delhi-110001.
PAN/GIR No. ADEPS9808D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Jitendra Singh.AR
Revenue by	Ms.Rajeshwari Menon.Sr.DR

सुनवाई की तारीख/Date of Hearing	28.05.2024
घोषणा की तारीख/Date of Pronouncement	29.05.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre(NFAC) Delhi/ (CIT(A) passed u/sec143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

1) *On the facts and circumstances of the case, the National Faceless Appeal Centre (NFAC), Delhi erred in passing the order dated 27th December, 2023 upholding the order of Assessment Unit, Income Tax Department (hereinafter referred to as 'Ld. A.O.')] dated 23rd September 2022 passed under section 143(3) read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") determining total income of the Appellant at Rs.6,06,89,960/- as against returned income of*

Rs. 5,30,450/-. The Appellant strongly objects to the impugned order passed by NFAC as the same is bad in law and perverse on the following amongst other grounds which are urged without prejudice to one another: -

2. Order passed by NFAC rejecting the application made under Rule 46A merely on technical ground is void ab initio

i. The NFAC fell in error of law in passing the impugned order rejecting the application made by the Appellant under Rule 46A of the Income Tax Rules, 1962 merely on technical grounds without appreciating the facts and circumstances of the case in proper perspective. Hence, the impugned order passed by NFAC is void ab initio and the same may be quashed.

ii. The NFAC failed to appreciate that the Appellant is a senior citizen having multiple age related illness and thus, was prevented by sufficient cause from filing the relevant details / evidences before the Assessment Unit during the course of assessment proceedings. Hence, rejecting the application of appellant made under Rule 46A merely on technical grounds and deciding the appeal without considering the relevant documentary evidences furnished before him, is against the well settled rule of law. Hence, the impugned appellate order passed by NFAC is void ab initio and the same may be quashed.

Disallowance of deduction under section 57 of the Act unjustified Rs.64,16,659/-

The NFAC fell in error of law in disallowing the deduction claimed under section 57 of the Act amounting to Rs.64,16,659/- without appreciating the fact and circumstances of the case. Hence, disallowance of interest expenditure is without any basis and the same may be deleted.

The NFAC failed to appreciate that the interest expenses were incurred for earning the interest income of Rs.68,17,144/-. Thus, the interest expenses incurred by the Appellant are inextricably linked with the interest income earned which had been offered for tax under section 56 of the Act. Therefore, the Appellant prays that disallowance of Rs.64,16,659/- claimed

*under section 57 of the Act is against the provisions of law and the same may be deleted.*

*Treating the unsecured loan as unexplained cash credit under section 68 of the Act unjustified - Rs.5,37,42,847/-*

*The NFAC fell in error of law in upholding the action of the Assessment Unit in treating the unsecured loans borrowed during the year under consideration amounting to Rs.5,37,42,847/- as unexplained cash credit under section 68 of the Act without appreciating the facts and circumstances of the case. The appellant, therefore, prays that the addition of Rs 5,37,42,847/- under section 68 of the Act is unjustified and the same may be deleted.*

*The NFAC failed to appreciate that the unsecured loans were borrowed in the normal course of activity of the appellant and the same were received through proper banking channels. The Appellant had also paid interest on the unsecured loans borrowed and the applicable TDS was also deducted therefrom. Thus, the Appellant had discharged the primary onus cast upon it under section 68 of the Act. Hence, the addition of Rs.5,37,42,847/- is unjustified and the same may be deleted.*

*Without prejudice to the above, the NFAC further erred in upholding the action of the Assessment Unit, without appreciating that the provisions of section 68 of the Act are not applicable in the hands of the Appellant as the Appellant does not maintain any books of account. Thus, invoking the provisions of section 68 in the case of Appellant is against well settled provisions of law. The Appellant, therefore, prays that addition of Rs.5,37,42,847/- under section 68 of the Act is unjustified and the same may be deleted.*

*5. The Appellant denies any liability to pay interest under section 234B and 234C of the Act. Hence, the same are not leviable.*

*6. The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove.*

2. The Brief facts of the case are that, the assessee has filed the return of income for the A.Y 2020-21 on 10.03.2021 returning income of Rs. 5,30,450/-. Subsequently the Assessing Officer (AO) has issued notice u/sec 143(2) and 142(1) of the Act on various dates referred at page 3 of the assessment order. The AO found that the case was selected for limited scrutiny under CASS on the issues of (i) Deductions from income from other sources (ii) High Creditors / liabilities and (iii) Income from other sources. The A.O found that the assessee has claimed deduction u/sec 57 of the Act of Rs. 64,16,659/- against gross income of Rs. 68,17,144/- offered u/sec 56 of the Act and further the assessee has disclosed in the financial statements outstanding unsecured loans of Rs. 5,37,42,847/-.The assessee was provided ample opportunities of hearing and the assessee only on one occasion has filed adjournment application. Subsequently the A.O has issued notice U/sec 142(1) of the Act along with the annexure referred at page 3 of the order. Since the assessee has not complied with the notices, the AO based on the information on record observed that the deduction claimed u/sec 57 of the Act is not in accordance with the provisions of the Act and made addition of Rs,64,16,659/- and unexplained credits u/sec68 of the Act of Rs. 5,37,42,847/- and assessed the total income of Rs. 6,06,89,960/- and passed the order u/sec 143(3) r.w.s144Bs of the Act dated 23.09.2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO. The CIT(A) has rejected the additional evidence filed by the assessee and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information of the assessment proceedings and the CIT(A) has erred in rejecting the additional evidence filed under Rule 46A of the I T Rules. Further the assessee is a senior citizen and having medical issues. The assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The crux of the disputed issue is in respect of admission of additional evidence under Rule 46A of the I T Rules which could not be filed for various reasons before the Assessing officer and the same was rejected by the CIT(A) in the appellate proceedings. The contentions of the Ld. AR are that the additional evidence play a vital role in decision making and in the assessment proceedings. We considering the facts, circumstances, and additional evidences are of the opinion that the assessee should not

suffer for non filing of material information, as the evidences played vital role in decision making Accordingly, to meet the ends of justice and considering the principles of natural justice, we set aside the order of the CIT(A) and restore the entire disputed issues to the file of the Assessing officer to decide on merits and the assessee should be provided adequate opportunity of hearing. The assessee should cooperate in filling the information/evidences expeditiously and we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 29.05.2024.

Sd/-  
**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 29/05/2024

KRK.PS

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

*ITA. No. 498/MUM/2024 (A.Y.: 2020-21)*  
Vasantkumar Kantilal Shah., Mumbai .

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,

Mumbai