

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SUNIL KUMAR SINGH, JM**

**ITA No. 3806/Mum/2023**  
(Assessment Year: 2017-18)

M/s Dazzle Gold LLP  
46, 3<sup>rd</sup> Floor,  
Navy UG Building,  
Ladwadi, Kalbadevi,  
Dhirubhai Parekh Marg,  
Mumbai-400 002

**(Appellant)**

Vs.

ACIT,  
Circle 23(1)  
Matru Mandir, Tardeo,  
Mumbai-400 007

**(Respondent)**

**PAN No. AAKFD7862R**

Assessee by : None  
Revenue by : Shri Rajesh Meshram, DR  
Date of hearing: 22.05.2024  
Date of pronouncement : 30.05.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 3806/Mum/2023, is filed by Dazzle Gold LLP Mumbai (assessee /appellant) for A.Y. 2017-18, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 29<sup>th</sup> August, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 18<sup>th</sup> December, 2019, by the Asst.

Commissioner of Income Tax, Circle 23(1), Mumbai, was dismissed holding that assessee is not interested in pursuing the appeal.

02. Assessee has raised following grounds of appeal.

*“1. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals) - NFAC, hereinafter referred to as the CIT (A), has erred in dismissing the appeal of the appellant ex-parte without considering the relevant facts of the case which were available on the records.*

*2. The CIT(A) has erred in not considering the facts and passing a speaking order in relation to the grounds of appeal raised by the appellant and giving due consideration to the facts of the case. The appellant respectfully submits that the order of the CIT(A) is in violation of the principles of natural justice and the same deserves to be set-a-side.*

*3. Without prejudice to Ground 1 above, the assessing officer has erred in rejecting the books of accounts of the appellant merely on conjectures and suspicions and without pointing out any defect in the same. The CIT (A) has erred in confirming this action of the assessing officer by way of dismissing the appeal of the appellant without even adjudicating the issue raised.*

*4. Without prejudice to any of the above grounds, on the facts of the case, the assessing officer has erred in making*

*an addition of Rs. 57,44,671/- under section 68 of the Act in respect of the cash sales of the appellant by treating the same as unexplained. The assessing officer has failed to appreciate the correct facts of the case and the CIT (A) has erred in not deciding the specific issue raised by the appellant.*

03. Grievance of the assessee is that assessing officer has erred in making an addition in relation to the sales, which had already been offered to tax by the appellant. The impugned addition results in double addition in relation to the same income and therefore, the same deserves to be deleted.
04. The assessee is aggrieved by the above order stating that the appellate order passed ex-parte, without considering the relevant facts of the case, which are available on records and further in violation of principle of natural justice. On other grounds it contested the addition on merit in making an addition of ₹57,44,671/-.
05. The facts of the case shows that assessee is a partnership firm formed as LLP, filed its return of income on 23<sup>rd</sup> October, 2017, at a total income of ₹4,75,200/-. The return was selected for scrutiny. As per its details, it was found that the assessee has deposited ₹3,25,24,000/- in its bank account with Kalupur Commercial co-operative Bank Limited having bank account no. 0016. The learned



Assessing Officer found that the cash deposit has jumped from almost negligible to multiple times during demonetization. The assessee submitted that the above cash is deposited out of cash sales made during the period of 8<sup>th</sup> November, 2016 to 30<sup>th</sup> December, 2016, during demonetization period. The learned Assessing Officer noted that prior to 7<sup>th</sup> November, 2016, there was no cash sales and cash sales is made only in two days on 7<sup>th</sup> November, 2016 and 8<sup>th</sup> November, 2016. No credit sales were found during the above two days and further all the bills are below ₹2 lacs being under the monetary limit of quoting Permanent Account Number. The learned Assessing Officer has found that the above cash sales could not have been within one day and therefore, on the test of preponderance of human probabilities, it was inferred that the assessee has created artificial bogus sales by manipulating his books of accounts. Therefore, show cause notice was issued as to why the above cash deposited should not be added as income of the assessee as undisclosed income. The learned Assessing Officer noted that as the Reserve Bank of India has withdrawn Legal Tender character of old notes of demonetization of ₹500 and ₹1000/- with effect from 8<sup>th</sup> November, 2016, as per Specified bank Notes (Cessation of liabilities) at 2017, such legal tender were withdrawn. Assessee failed to explain the source of deposit during that period. Further, all the

cash bills are issued of less than ₹2 lacs which are below the limit of providing KYC norms. Therefore, it is highly improbable and unrealistic. Therefore, the learned Assessing Officer rejected the books of accounts applying provisions of Section 145(3) of the Act. The learned Assessing Officer noted that the sales for entire November month of 2016 are ₹25,16,89,395/- whereas cash sales of ₹3,24,63,658/- was shown to be cash sales on 8<sup>th</sup> November, 2016. Therefore, the above sales have been booked by manipulating books of accounts. The learned Assessing Officer held that surge on sales is estimated on the basis of average daily sales. Average daily sales was estimated at ₹2,09,74,116/- . The 50% thereof was determined at ₹1,14,89,342/- and accordingly, he made an addition of ₹57,44,671/- to the total income of the assessee. The assessment order under Section 143(3) of the Act was passed on 31<sup>st</sup> December, 2019, determining the total income of ₹62,19,870/-. The above addition of ₹57,44,671/- was taxed at the rate of 60% under Section 115BBE of the Act.

06. The assessee preferred an appeal before the learned CIT (A), who dismissed the appeal of the assessee holding that assessee was issued notices on 22<sup>nd</sup> January, 2021, 14<sup>th</sup> October, 2021, 17<sup>th</sup> March, 2023 and 9<sup>th</sup> May, 2023. The assessee did not furnish any response to the same. Therefore, the learned CIT (A)



after considering the judicial precedents held that it can be presumed that assessee is not interested in pursuing this appeal and therefore, same was dismissed.

07. Aggrieved by the same, assessee preferred the appeal before us.
08. Registry issued notices to the assessee and fixed the date of hearing on 4<sup>th</sup> March, 2024 and further on 9<sup>th</sup> April, 2024. One of the notices was returned by post stating that address is not known. On verification of the address of the notice sent from form no.36, it was found that the notice was addressed correctly. In view of this, the appeal is decided in absence of the assessee as per information available on record.
09. The learned Departmental Representative submitted that despite notices sent by the learned CIT (A), the assessee failed to respond and therefore, the appeal of the assessee is correctly dismissed.
010. We have carefully considered the rival contentions of the learned Departmental Representative; however, we find that in this case, the learned CIT (A) has dismissed the appeal of the assessee on the solitary ground of non-appearance. He did not dispose off the appeal on the merits of the case. We find that according to provisions of Section 250 of the Act, the learned CIT (A) in accordance with the Provisions of



Section 250(6) of the Act is duty bound to dispose off the appeal stating the points for determination, the decision thereon and the reason for the decision. Therefore, there is no power available with the learned CIT (A), who disposed off the appeal for non-prosecution. Even in absence of the assessee, if assessee does not co-operate, he has to decide the appeal on the merits of the case. As in the present case, the appeal is decided for non-prosecution by the learned CIT (A), we do not have any other alternative but to restore it back to the file of the learned CIT (A), to decide afresh on the merits, after affording assessee reasonable opportunity of hearing. Accordingly, ground no.1 and 2 of the appeal are allowed with above directions.

011. All other grounds remains unadjudicated in absence of the order of the learned CIT (A) on merits of the case.
012. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.05. 2024.

Sd/-  
(SUNIL KUMAR SINGH)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 30.05. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:



1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai