

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.210/M/2024
Assessment Year: 2010-11**

Shri Farooq Haji Gaffar Motorwala, 4/12M, 4 th Floor, Haji Farooq Mansion, 91-93, Sarang Street, Crawford Market, Mumbai – 400 001 PAN: AABPM7599R	Vs.	Income Tax Officer, National e-Assessment Centre, Delhi Ward No.17(3)(1), Kautilya Bhavan, Mumbai – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Deepak Chhajed, A.R.

Revenue by : Shri C.T. Mathews, Sr. DR

Date of Hearing : 22 . 05 . 2024

Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 21.08.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2010-11.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 26.03.2015 under section 144 read with section 147 of the Act made the addition of Rs.1,23,45,000/- under section 68 of

the Act on account of unexplained cash deposit and added the same in the income of the assessee. The assessee, being aggrieved, challenged the said addition before the Ld. Commissioner. The assessee by filing additional evidence before the Ld. Commissioner contended that non compliance to various notices issued by the AO was on account of non cooperation from the chartered accountant and further the bank also did not give the statement in time as the same pertains to old period. The Ld. Commissioner though considered the claim of the assessee, however, by observing "*that the assessee has not furnished any document in support of the fact that he indeed made a request to the bank for supply of relevant bank statement. Both these arguments submitted by the assessee are not supported with any documentary evidence and is not convincing at all. If the chartered accountant was not cooperating, nothing prevented the assessee to attend the hearing before the AO and to explain his position requesting the AO to call for bank statement directly from the bank*", ultimately held that in his considered opinion, the Assessee's case for admission of additional evidence is not covered under rule 46A(1)(b)(c) of the Income Tax Rules, 1962 (in short "the Rules") and consequently dismissed the appeal of the assessee.

3. We have given thoughtful considerations to the peculiar facts and circumstances of the case and observe that though there are laches on the part of the assessee to produce the relevant documents and therefore assessee is not entitled for any leniency/relief, however, considering the peculiar facts that the details such as bank statements are relevant and essential for proper and real adjudication of the issue involved, **we are inclined to remand the instant case to the file of the AO by taking this case as an exception, for decision afresh, suffice to say by affording reasonable opportunity to the assessee to substantiate his claim.**

4. The Assessee is also directed to cooperate with the appellate proceedings and file the relevant submissions/documents which would be essential/required by the AO for proper adjudication of the case. In case of further default, the Assessee shall not be entitled for any leniency.
5. Thus, the case is remanded accordingly.
6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.