

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.689/Mum./2024
(Assessment Year : 2017-18)

Archivers Exim Pvt. Ltd

B-26, Matruchaya Buildings,
S. N. Road, Mulund (West),
Mumbai-400080
PAN – AACCR9956P

..... Appellant

v/s

Income Tax Officer, Wd-15(1)(1)

Aayakar Bhawan, M. K. Road,
Mumbai-400020

..... Respondent

Assessee by :Shri Prakash Jhujhunwala
Shri Jay Thakkar

Revenue by :Shri Sunny Kachhwaha

Date of Hearing –28/05/2024

Date of Order – 05/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 30/01/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds:-

"1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order ex parte without allowing adequate opportunity of being heard and ought to have considered the bonafide reasons which had precluded the appellant to participate in the appeal proceeding;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the entire additions made in the assessment order without deciding the case in merits;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Rs.1,07,68,388/-, wherein the business income had been estimated @ 2% of total turnover of Rs.64.52 crores;

4.0 The Ld. CIT(A), before sustaining the estimation of the business income @ 2% of total turnover, ought to have considered the vital facts, being; a) The entire purchase and sales transaction are supported with purchase bills, sale bills, delivery challans, Ledgers, confirmation of account, bank statements, VAT audit report, quantity tally and other documents; b) The Ld. AO | had not rejected the appellant's books of accounts u/s.145(3), thus is not justified in estimating the business income @ 2% of total sales turnover;

5.0 On facts and circumstances of the case and in law, Ld. AO erred in confirming the addition u/s.68 r.w.s.115BBE of Cash deposits made in the bank account during demonetization period of Rs.15,46,277/-;

6.0 The Ld. CIT(A), before confirming the addition u/s.68 of cash deposits made in the bank account during demonetization period of Rs.15,46,277/, ought to have considered the vital facts, being;

a) The source of cash deposits is out of realization of sales consideration recorded in audited books of accounts;

b) The Ld. AO had not rejected the appellant's books of accounts u/s. 145(3), thus is not justified in making the addition during the year;

7.0 Without prejudice to the Ground no.5 & 6, Ld. AO having made the addition of cash deposits corresponding to sales recorded in audited books of account, ought to have reduced the business income on excluding the disputed sales considered in audited P & L A/c."

3. During the hearing, the learned Authorised Representative ("learned AR") at the outset submitted that the learned CIT(A) dismissed the appeal filed by the assessee by an ex-parte order. The learned AR further submitted that the learned CIT(A) issued three notices to the assessee within a short span of 19 days and none of the notices were received by the assessee, as they were sent on the email Id of Managing Director's brother, who is no longer

associated with the company. Accordingly, the learned AR submitted that there was no willful or deliberate attempt on the part of the assessee for not complying with the notices issued by the learned CIT(A).

4. Having considered the submissions and perused the material available on record, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the addition made by the AO. During the hearing, the learned AR submitted that the hearing notices were sent by the learned CIT(A) on the email ID of Managing Director's brother, who is no longer associated with the company within a short span of 19 days and therefore, the assessee could not file its response to the same. In view of the above, we are of the considered opinion that in the interest of justice, the assessee be granted one more opportunity to represent its case on merits before the learned CIT(A). We further find that the learned CIT(A) merely on the basis of non-compliance of notices, dismissed the appeal filed by the assessee without adjudicating the grounds raised by the assessee on merits, as required under section 250(6) of the Act. Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. Further, the assessee is directed to furnish its operational email Id to the learned CIT(A) for the purpose of communication of hearing notice(s)

within 60 days from the date of receipt of this order. The learned CIT(A) is directed to issue the hearing notice(s) on the email ID so furnished by the assessee, unless at a subsequent stage, the assessee wishes to again change its email Id for the purpose of communication of hearing notice, for which the assessee is directed to intimate the learned CIT(A) in advance. Thus, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 05/06/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai