

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 267/MUM/2024
Assessment Year: 2017-18**

Nirchem Dyes and Chemicals Pvt.
Ltd.,
305-306, 3rd floor, Anand Building,
Kazi Sayed Street, Masjid Bunder,
Mumbai-400003.

**PAN NO. AAACV 2935 L
Appellant**

Vs. Income-tax Officer 7(2)(4),
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Akash Kumar
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 30/05/2024
Date of pronouncement : 04/06/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:



1. *The Commissioner of Income-tax (Appeals) at National Faceless Appeal Centre, Delhi (hereinafter referred to as the CIT(A)) erred in framing an ex parte order.*

2. *The CIT(A) erred in upholding the action of the Income-tax Officer - 7(2)(4), Mumbai (hereinafter referred to as the Assessing Officer) in making aggregate addition of Rs 48,75,500 under section 68 of the Act, on account of cash deposited in bank account during demonetisation period which arises out of sales.*

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned addition as he has not appreciated the facts of the case inasmuch as the cash deposited in the bank account is arising out of sales duly recorded in the books of account.

2. At the outset, the Ld. counsel for the assessee submitted that the assessee could not comply the notices issued by the Ld. CIT(A) for the reason that assessee was contemplating to opt for Vivad se Vishwas Scheme. However, due to shortage of the fund, the assessee could not opt for Vivad se Vishwas Scheme, therefore, could not respond to the notices issued by the Ld. CIT(A). He gave an undertaking on behalf of the assessee that in case matter is restored back to the file of the Ld. CIT(A), all the notices and queries raised by the Ld. CIT(A) would be duly responded.

3. We have heard rival submission of the parties and perused the relevant material on record. We find that due to non-compliance on the part of the assessee before the Ld. CIT(A), the Ld. CIT(A) sustained the addition made by the Assessing Officer observing as under:

“During the course of appellate proceedings, the appellant was given numerous opportunities in form of hearing notices u/s 250 of the Act, the same are tabulated in para 04 above. In response to



these notices the appellant did not make any submissions and only sought adjournment three times. Each time adjournments were granted by this office by ample time. The first adjournment was made on 04.01.2021 wherein the appellant had submitted that they were contemplating to opt for vivaad se vishwas scheme. However, after lapse of almost three years the assessee had not given any proof for filing any Forms of VsVs Scheme. Further, it was also verified through CPC2.0 that the VsVs was not opted by the appellant till the date of passing of this order. Similarly, the appellant sought adjournment 2 more times which were duly provided by this office. However, the appellant did not make any submission despite giving enough opportunity. Thus, it is clear that the appellant has no any contention to prove its point. Further, the appellant has failed to prove the point that why there were cash sales made only for two months in the entire year. Also, assessee failed to substantiate the cash book with supporting vouchers. The assessee could not produce cross verification from the third parties. These details were neither furnished during the assessment proceedings as well as during appellate proceedings. In absence of any explanation/evidence from the appellant, I do not find any reason to interfere with the order of the Assessing Officer. Therefore, the order of the Assessing Officer is upheld and the ground no.1 and 2 of the appeal are dismissed.”

3.1 Before us, the Ld. counsel for the assessee has explained the reason for non-compliance as the assessee was contemplating to opt for ‘Vivad Se Vishwas Scheme’ and settle the dispute. However, due to shortage of the fund, the assessee could not opt for the said scheme. Meanwhile, the Ld. CIT(A) pass the impugned. In our opinion, there is a reasonable cause for non-compliance before the Ld. CIT(A). Further, in view of the undertaking by the Ld. counsel for the assessee and in the interest of substantial justice, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh after considering submission of the assessee. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.



4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 04/06/2024.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 04/06/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai