

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 307/KOL/2024
Assessment Year: 2017-2018**

***Amarlal Thakurdas Bathija,.....Appellant
6-C, Gulmohar Building, Middleton Street,
Camac Street, Kolkata
C/o. S.L. Kochar, Advocate,
86, Canning Street, 3rd Floor,
Kolkata-700001
[PAN:AEFPB9391E]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-33, Kolkata,
10B, Middleton Row,
Kolkata-700071***

Appearances by:

*Shri Anil Kochar, Advocate appeared on behalf of the
assessee*

*Shri Manas Mondal, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : April 30, 2024

Date of pronouncing the order : June 07, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi dated 15.01.2024 passed for A.Y. 2017-18.

2. The assessee has taken six grounds of appeal, out of which Grounds No. 1, 2, 5 & 6 are general grounds, which do not call for recording of any specific finding.

3. In rest of two grounds, the grievance of the assessee is that the ld. CIT(Appeals) has erred in confirming the additions of

(a) Rs.1,70,00,000/- (on account of unexplained credit);

(b) Rs.49,52,712/- (disallowance out of business expenses).

4. With the assistance of ld. Representatives, we have gone through the record carefully. It emerges out from the record that the assessee has filed his return of income on 27.10.2017 declaring total income of Rs.52,76,560/-. The case of the assessee was selected for scrutiny assessment and notices under section 143(2)/142(1) were issued and served upon the assessee. According to the ld. Assessing Officer, the assessee did not participate in the assessment proceeding and hence, he has passed an assessment order under section 144 of the Income Tax Act, which authorizes him to pass an assessment order according to his best judgment.

5. The ld. Assessing Officer has made three additions, namely-

(a) Rs.1,70,00,000/-;

(b) Rs.27,072/-, &

(c) Rs.49,52,712/-.

6. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee. It was dismissed *ex-parte* for want of prosecution.

7. On due consideration of the facts and circumstances, we find that as far as the expenditure of Rs.27,072/- added by the ld. Assessing Officer is concerned, the assessee has submitted that he has himself added back this expenditure and did not claim deduction. Therefore, ld. Assessing Officer has added this amount twice. This aspect is remitted back to the ld. Assessing Officer for verification and if the amount has been added twice, then, one disallowance is to be deleted.

8. With regard to the addition of Rs.1,70,00,000/- is concerned, the ld. Assessing Officer has recorded a very brief finding on this issue, which reads as under:-

“Unexplained Cash Credit:-

It is evident from the Income Tax System (ITS) Information that the assessee had deposited Rs.1,70,00,000/- in his Bank account during the demonetization period. The assessee was show caused as to why the entire amount should not be added back to the entire income u/s 69A of the Income Tax Act, 1961. But the assessee did not file any reply in response to the above show cause. In absence of any valid explanation the entire amount of Rs.1,70,00,000/- is added to the total income of the assessee.

[Addition: Rs.1,70,00,000/-]”.

9. The ld. Counsel for the assessee has submitted that ld. Assessing Officer has misread the accounts. In this connection, the assessee has already declared this amount under Income Declaration Scheme (IDS) and, therefore, it should not be added again by the ld. Assessing Officer. He placed on record copy of Form No. 1 and other documents.

10. On due consideration of these documents with the help of ld. D.R., we are of the view that this issue deserves to be remitted back to the file of ld. Assessing Officer for cross verification and re-adjudication. The ld. Assessing Officer shall go into the IDS declaration made by the assessee and thereafter reappraise the Bank account and determine whether any unexplained money is available in the account or not. This ground is allowed for statistical purposes.

11. The next issue in dispute relates to the addition of Rs.49,52,712/-. A perusal of the assessment order would reveal that the ld. Assessing Officer has made a comparative analysis of Profit & Loss Account ended as on 31st March, 2016 as well as on 31st March, 2017. He observed that the turnover in A.Y. 2017-18 increased by 8.63% of the turnover in the immediately preceding year. The ld. Assessing Officer has restricted the allowance of expenditure in the same ratio as was claimed in the immediately preceding years. The ld. Assessing Officer was of the view that expenditure is to be allowed in the same ratio in which turnover has increased, namely turnover has increased at 8.63% from the last year's turnover, then, according to him, the expenditure

claimed in the last year, and vis-à-vis this year should also be allowed by enhancing 8.63% of the expenditure. If any expenditure has been incurred over and above that ratio is to be disallowed without actually verified anything. We find that this method is not permissible. The expenditure cannot be restricted by applying a thumb rule without appreciating what is the actual necessity for claiming higher expenditure. For example- Business Promotion Expenses were claimed at Rs.58,145/- in the accounts ending on 31.03.2016, whereas these were claimed at Rs.75,380/- in the accounts as on 31.03.2017. The percentage was increased by 29.64%, whereas Id. Assessing Officer was of the view that this increase in the percentage of expenditure should not be 8.63%. By applying the threshold limit of 8.63%, he worked out excess expenditure of Rs.12,583/-, which he disallowed. To our mind, this type of logic is not at all applicable. The Id. Assessing Officer should have rejected the book result, then, estimated the profit in his assessment under section 144. He cannot select individual item of expenditure and then, make a disallowance in this arbitrary manner. Therefore, this disallowance is not sustainable and we delete it accordingly.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 07/06/2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 7th day of June, 2024

*Copies to :(1) Amarlal Thakurdas Bathija,
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*(2) Assistant Commissioner of Income Tax,
Circle-33, Kolkata,
10B, Middleton Row, Kolkata-700071*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

*(6) Guard File
TRUE COPY*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.