

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND SHRI
ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1131/Del/2024
Assessment Year: 2017-18

Ficus Mercantile Limited, B-89 Ground Floor, Malviya Nagar, New Delhi-1100 17	Vs.	ITO, Ward 9(2), New Delhi.
PAN : AAFCS4215B		
(Appellant)		(Respondent)

Assessee by	S/Shri R.S. Singhvi, Satyajeet Goel and Rajat Garg, CAs
Department by	Shri T. James Singson, CIT-DR

Date of hearing	20.05.2024
Date of pronouncement	13.06.2024

ORDER

PER ANUBHAV SHARMA: JUDICIAL MEMBER:

This appeal has been preferred by the Assessee against the order dated 16.01.2024 of National Faceless Appeal Centre (NFAC)/ learned Commissioner of Income-Tax(Appeals), New Delhi

(hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. CIT(A), Delhi-3/100398/2019-20 arising out of an appeal before it against the order 20.12.2019 passed under Section 144 of Income-Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward 9(2), Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. On hearing both the sides and perusing of the record, it comes up that the assessee had failed to file the return for the year under consideration under Section 139 before the due date and in response to the notice issued under Section 142(1) of the Act. The Assessing Officer had examined the deposit of cash in the bank account of assessee during the demonetization period and thus Assessing Officer proceeded under Section 144 (1)(b) of the Act and made the addition.
4. Before the learned Commissioner (Appeals), assessee had claimed that there was no service of the notice directly in any form and the notice was served through the affixture by Inspector and thus it was claimed that the assessment order under Section 144 of the Act is not justified. However, learned Commissioner (Appeals) has sustained the addition made by the Assessing Officer for the whole of

the credit entries in the bank account under Section 69A of the Act, but restricting it to 10% of the total cash credits.

5. Here, before the Tribunal, assessee has raised various grounds on merits and has also pleaded that the impugned assessment order was passed without sufficient opportunity of hearing. Further, an application for admission of additional evidence under Rule 39 of the ITAT Rules, 1963 is filed. In regard to which learned authorized representative has submitted that the business of appellant company was closed down due to lack of availability of funds and the directors were under personal difficulty because of which return could not be filed. Accordingly, assessee has sought to file following additional evidences:

S. No.	Particulars	Page No. of PB
1.	Copy of the audited balance sheet for the A.Y. 2017-19	1-9
2.	Copy of the Summary of the entries along with the HDFC Bank Account Statement and Bank Book from 01/04/2016 to 31/03/2017: <ul style="list-style-type: none"> • HDFC Bank A/c. No. 37183 • HDFC PMS Bank Account • Yes Bank Account 	10-52 53-56 67-59
3.	Cash Book showing the Cash deposits of Rs.67,00,000/- made during the year.	60-61

4.	<p>Documents in relation to alleged credit entries amounting to Rs.21,10,18,002/-:</p> <ul style="list-style-type: none"> • Chart showing the party-wise details of the sums received and repaid during the year along with interest charges and TDS deducted. • Confirmed Ledger Account of each party along with PAN details for preceding and subsequent year. 	<p style="text-align: center;">62</p> <p style="text-align: center;">63-100</p>
5	Application for admission of additional evidences under Rule 29 & 30 of the ITAT Rules, 1963	101-105

6. Learned authorized representative has further pointed out that there is also an error in the credit amount taken up by the Assessing Officer at Rs.21,10,18,002 while the correct amount is Rs.15,14,10,163 of which Rs.14,60,46,500 was received for the furtherance of business on returnable business and assessee has confirmations of the concerned persons and the remaining credit amount of Rs.53,63,663 was utilized for other legitimate business purposes.

7. Learned Departmental Representative has supported the findings of tax authorities below and has further submitted that assessee has been non-compliance throughout by the assessee.

8. After taking into consideration the facts and circumstances cited before us, we are of the considered view that as claimed by the

learned authorized representative that assessee company is non-functional, therefore, assessee could not be served directly during the assessment proceedings and Assessing Officer had to take recourse of substituted service by affixture. The failure of Commissioner (Appeals) to take it into consideration these aspects and at the same time restricting addition to 10% of the total cash credits, is not justified. Additional evidences cited before us are certainly relevant and have direct bearing on the alleged deposit of cash during the demonetization period, thus, we are of the considered view that ends of justice will be served by giving assessee an opportunity to contest on merits, before the AO, in a *de nova* assessment, as per law.

9. Consequently, the appeal is allowed for statistical purposes with consequences to follow as per directions above.

10. Stay application tagged with the appeal becomes infructuous is accordingly dismissed.

Order pronounced in the open court on 13/06/2024.

(G.S. PANNU)
VICE-PRESIDENT

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 13th June, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi