

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.2670/Del/2023
[Assessment Year: 2011-12]**

M/s Comfort Nest Luxory Builders Pvt. Ltd. 317, 3 rd Floor, Best Arcade, Plot No.3, Pocket-6, Sector-12, Dwarka New Delhi-110075	Vs	ITO, Ward-6(2), C.R. Building, ITO, New Delhi-110001
PAN-AAACC9821A		
Assessee		Revenue

Assessee by	Sh. Shailender Bajaj Adv. and Sh. R.R. Maurya Adv.
Revenue by	Sh. Toufel Tahir Sr. DR

Date of Hearing	13.06.2024
Date of Pronouncement	13.06.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 10.08.2023 pertaining to Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee reads as under:-

1. facts and in law while passing the Order No. ITBA/NFAC/S/250/2023-24/1055032642(1) dated

10-08-2023 wherein it has confirmed the addition ,of share capital of Rs. 1,00,00,000/-as unexplained cash credit u/s 68, made by ITO Ward 6(2), New Delhi, in the order dt. 20-12-2018 passed under section 147/143(3).

2. That the impugned order dated 10-08-2023 passed by NFAC is void abinitio, bad in law and in gross violation to the principles of natural justice since it has been passed *exparte* and without considering the request for adjournment and virtual hearing filed vide application dated 10-07-2023.

3. That the impugned order passed by NFAC is void and illegal since it has been passed without disposing of the following additional grounds filed on 18-12-2019 :

a. That the reasons on the basis of which the proceedings were been initiated under section 148 were *prima facie* without application of mind, bad in law and against the facts of the case.

b. That the order dated 9/11/2018 disposing off the objections raised against the reasons recorded passed by the assessing officer is bad in law and against the facts of the case.

4. That without prejudice to the above :

a. NFAC has erred both in facts and in law while sustaining the addition of share capital of Rs. 1,00,00,000/- as unexplained cash credit u/s 68 of the Act made by the assessing officer.

b. NFAC has erred both in facts and in law while upholding that appellant did not establish identity, creditworthiness and genuineness of the transaction.

c. NFAC has erred both in facts and in law while upholding that share capital is actually appellant own unaccounted money.”

3. Brief facts of the case:- In this case, information was received by the AO from the ADIT(Investigation)-32, New Delhi, vide letter dated 27.03.2018, wherein, the assessee was showing credit of Rs.55 lakhs and Rs.45 lakhs respectively on 26.08.2010, which was claimed as source of payment for purchase of Gurgaon property, for which no documentary evidences were filed. Accordingly, the AO reopened the assessment u/s 148 of the Act. The AO after making the enquiry and for other reasons, as stated in the assessment order, held that amount of Rs.1,00,00,000/-

was unexplained cash credit in the guise of share capital and added u/s 68 of the Act by passing an order u/s 147/143(3) dated 20.12.2018.

4. Against this order, the assessee filed an appeal before the Ld. CIT(A) taking six grounds of appeal against the addition of Rs.1,00,00,000/-. The assessee also filed the following additional ground of appeal on 18.12.2019, challenging the initiation of proceedings u/s 148 of the Act by the AO. The additional ground taken is reproduced as under:-

3. That the impugned order passed by NFAC is void and illegal since it has been passed without disposing of the following additional grounds filed on 18-12-2019 :

a. That the reasons on the basis of which the proceedings were been initiated under section 148 were prima facie without application of mind, bad in law and against the facts of the case.

b. That the order dated 9/11/2018 disposing off the objections raised against the reasons recorded passed by the assessing officer is bad in law and against the facts of the case.

5. The ld. CIT(A) after discussing the merits of the case, agreed with the AO and confirmed the addition of Rs.1,00,00,000/- u/s 68 of the Act.

6. Against the said order, the assessee is in appeal before us.

7. The main grievance of the assessee is regarding the non-disposal of the additional ground taken in ground No.3(a) and 3(b) as above.

8. We have heard both the parties and perused the material available on record. On perusal of the order dated 10.08.2023 of the Ld. CIT(A)/(NFAC), it is seen that the Ld. CIT(A) has not adjudicated the above additional grounds of the assessee, which goes to the root of the matter. Therefore, the order of the Ld. CIT(A) is set-aside and restored to the file of

the Ld. CIT(A) for adjudication of the additional grounds of appeal. Further, it is also seen that the assessee did not appear before the Ld. CIT(A) and there was no effective representation on behalf of the assessee. Therefore, in order to subserve the interests of natural justice and to provide an opportunity to the assessee to effectively represent his case, the order of learned CIT(A) is set aside and the matter is restored to the file of learned CIT(A) for decision afresh on merits as well as the additional ground, after providing reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 13th June, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 13.06.2024.

SJK

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,