

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 4604/Mum/2023
(Assessment Year: 2017-18)

Shirin Razzak Zariwala B/603, 6 th Floor, Diamond Park, Khadi Machine Road, Kausa, Opp. Rehmaniya Hospital, Mumbra, Thane-400 612	V s.	ITO, Ward-3(3) Ashar, I T Park, Wagale Industrial Estate, Thane (W), Thane-400 604
PAN/GIR No. AAMPZ5218 M		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Ms. Rajeshwari Menon
Date of Hearing	:	08.05.2024
Date of Pronouncement	:	21.06 .2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.
3. The assessee has raised the following grounds of appeal:

Sr. no.	Grounds of appeal		Tax effect relating to each ground of appeal
1	a)	<i>On the facts and circumstances of the case, CIT(A) erred in passing and exparte order and confirming the addition of Rs.1,31,90,690</i>	50,63,881
	b)	<i>CIT(A) erred in not adjudicating the appeal on merit</i>	
	c)	<i>The appellant submits that the order may be set aside and opportunity may be provided to the appellant to provide and substantiate her claim and expenses</i>	
2	a)	<i>On the facts and circumstances of the case and in law, the appellant was prevented from appearing before the CIT(A) as well as the A.O., for reasons beyond her control. The appellant may be provided an opportunity to represent the case before the tax authorities</i>	50,63,881
	b)	<i>The appellant submits that an opportunity be given to the appellant to adduce the additional evidences to substantiate her case.</i>	
3	i)	<i>The learned CIT(A) erred in not adjudicating the following grounds:</i>	35,42,388
	a)	<i>The learned Assessing Officer erred in assessing the business income at Rs.1,10,05,190</i>	
	b)	<i>The learned Assessing Officer erred in applying the rate of 8 percent on the total receipts excluding cash deposit made during demonetization period.</i>	
	c)	<i>The learned Assessing Officer ought to have appreciated that the books of accounts were annexed to the audit report submitted.</i>	
	d)	<i>Without prejudice, the learned Assessing Officer ought to have assessed the business income at Rs.10,63,453/- as submitted in the audit report.</i>	
	ii)	<i>On the facts and circumstances of the case CIT(A) erred in confirming the addition indirectly by not dealing with the above ground in respect of the addition of Rs.1,10,05,190 though the said amount is not an income of the appellant. The additions were made without proper application and appreciation of the tax audit report & accounts available on record.</i>	
4	i)	<i>The learned CIT(A) erred in not adjudicating the following grounds:</i>	15,21,493
	a)	<i>The learned Assessing Officer erred in making addition of Rs.21,85,500 under section 69A of the act.</i>	
	b)	<i>The learned Assessing Officer erred in treating the entire cash deposit made during demonetization period as unexplained.</i>	
	c)	<i>The learned Assessing Officer ought to have appreciated that the books of account were maintained and audited and taxable income was disclosed in the audit report.</i>	
	ii)	<i>On the facts and circumstances of the case CIT(A) erred in confirming the addition indirectly by not dealing with the above ground in respect of cash deposit of Rs.21,85,500 though the said amount is out of the regular books of account.</i>	
	iii)	<i>The appellant submits that the cash deposits are part of the total credit entries in the bank account of Apana Sahakari Bank Ltd., which amounts to double addition of the same.</i>	

5		<i>On the facts and circumstances of the case and in law, the appellant submits that an opportunity may be provided to substantiate the claim that income should not be more than Rs.10,63,453</i>	50,63,881
6		<i>On the facts and circumstances of the case and in law, the A.O. erred in charging addition made u/s. 69A as per provisions of S.115BBE instead of normal provisions.</i>	13,11,300
7		<i>The appellant craves leave to add, amend, modify, cancel and or substantiate any of the grounds of the appeal</i>	-
		Total tax effect	50,63,881

3. The brief facts are that the assessee is an individual and engaged in the business of wholesale of trading of clothes in the name and style of M/s. Sahil Enterprises. The notice u/s. 142(1) dated 30.11.2017 was issued by the Id. Assessing Officer ('A.O.' for short) for furnishing return of income for the year under consideration and the same was not complied by the assessee. The Id. A.O. passed the assessment order dated 07.11.2019 u/s. 144 of the Act, determining the total income at Rs.1,31,90,690/-, after making an addition of Rs.21,85,500/- u/s. 69A of the Act towards cash deposit made by the assessee during demonetization and Rs.1,10,05,190/- being 8% of the estimated business turnover of Rs.13,75,64,875/-.

4. The assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The Id. CIT(A) vide order dated 18.10.2023, upheld the order of the Id.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate his claim and has been non compliant throughout the appellate proceedings.

6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

7. We have heard the Id. DR and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.
8. The Id. DR vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) as well as the Id. A.O. which was not availed by the assessee.
9. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply and co-operate with the proceedings without any undue delay on his side.
10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.06.2024

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 21.06.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai