

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.346/Nag./2023
(Assessment Year : 2016-17)

Shaheen Frozen Foods
C/o Syed Ainuddin Khatib
Syedpura, Ward no.9
Balapur, Akola 444 302
PAN – ABTFS3422J

..... Appellant

v/s

Income Tax Officer
National Faceless Appeal Centre, Delhi

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 25/06/2024

Date of Order – 25/06/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 01/09/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

2. The assessee has raised following grounds of appeal:-

"1. *The Id. CIT(A) NFAC erred in:*

i. making addition of Rs.4,85,89,004/- to the total income returned ignoring the relevant evidence already filed with the Department in the form of Audit Report under section 44AB of the Income Tax Act, 1961.

ii. ignoring the fact that not all credits in bank accounts are of revenue nature and not all receipts are income under the law.

iii. invoking section 68 on the facts of the case and thus making an illegal and unsustainable addition.

2. That the order passed by the Id. CIT(A)/NFAC is illegal, invalid and bad in law.

3. The Id. CIT(A) NFAC has erred in law and in facts in confirming the assessment order passed by the AO assessing the total income at Rs.4,85,89,004/- as against returned income of Rs. Nil.

4. The Id. CIT(A) NFAC has erred in law and in facts in ignoring the fact that not all credits in bank accounts are of revenue nature and not all receipts are income under the law.

5. The Id. CIT(A) NFAC has erred in law and in facts in not considering the submission that section 68 has no applicability to the facts of the case as a bank account is not the same as assessee's books of account.

6. That the Id. CIT(A) NFAC has erred in confirming the order of the AO ignoring the position of law that provisions of section 68 cannot be applied in respect of income from a source which has already been taxed which would amount to double taxation.

7. That the Id. CIT(A) NFAC has erred in deciding the appeal without calling/ downloading the replies submitted by the appellant during appeal proceedings and thus disregarding the evidence filed.

8. That the Id. CIT(A) NFAC has erred in passing a non-speaking order by ignoring the submission filed which is against the law.

9. That the Id. CIT(A) NFAC has erred in passing a non-speaking order by not giving any specific findings/ reasons for dismissal of the appeal which is against the law.

10. That the Id. CIT(A) NFAC has grievously erred in relying on orders not relevant to the facts of the case.

11. That the CIT(A) NFAC has erred in deciding the appeal without considering the request for opportunity of furnishing remaining reply before final decision in the matter.

12. That the CIT(A) NFAC has acted in undue haste and denied the assessee the right to present case and evidence.

13. That the CIT(A) NFAC has sacrificed the interest of substantive justice.

14. The assessee craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal."

3. When this appeal was taken up for hearing, the learned Counsel for the assessee submitted that the assessee has not filed details before the Assessing Officer. However, the details were filed before the learned CIT(A) along with petition for admission of additional evidence and further submitted that the learned CIT(A), without considering the additional evidences, simply confirmed the order passed by the Assessing Officer. He, therefore, prayed that the entire issue may be restored to the file of the Assessing Officer for fresh consideration in accordance with law.

4. On the other hand, the learned Departmental Representative submitted that the assessee neither appeared nor filed details before the Assessing Officer and had filed such details before the learned CIT(A) for the first time.

5. We have heard both the parties and perused the material available on record. Though the assessee has not filed any details before the Assessing Officer, however, admittedly, the assessee had filed such details before the learned CIT(A) who ought to have adjudicated the issue raised by the assessee on merit by considering the material available on record. The learned CIT(A) has not considered any material. Consequently, we set aside the impugned order passed by the learned CIT(A) and restore the entire matter to the file of the Assessing Officer and direct him to adjudicate the matter *denovo* on merit in accordance with law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to adhere to the notices issued by the Assessing Officer and file all other details which are required for adjudication by the Assessing Officer.

promptly. Thus, all the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 25/06/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 25/06/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur