

**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.878/Del/2024
[Assessment Year 2017-18]**

Darshan Lal Saraf Private Limited, D-2/3, Krishna Nagar, Delhi-110051	Vs	Income Tax Officer, Ward-7(2), Delhi-110002
PAN-AACCD2978F		
Assessee		Revenue

Assessee by	Sh. Shivam Malik, Adv.
Revenue by	Sh. Vivek Kumar Upadhyay, Sr.DR

Date of Hearing	08.07.2024
Date of Pronouncement	08.07.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi dated 15.02.2024 pertaining to Assessment Year 2017-18.

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

“1. That in view of the facts and circumstances of the case and in law, the Ld. CIT(NFAC) erred in passing the order without considering the written submissions filed by the appellant on 23.01.2024.

2. That in view of the facts and circumstances of the case and in law, the Ld. CIT(NFAC) erred in passing an ex-parte order, thus violating the core principles of natural justice.

3. That in view of the facts and circumstances of the case and in law, the Ld. CIT(NFAC) erred in upholding the order of the Assessing Officer whereby an addition to the tune of Rs.2,77,50,000/- u/s 68 was made.

4. That in view of the facts and circumstances of the case and in law, the Id. CIT(NFAC) failed to appreciate the fact that the deposits in the bank account were out of cash sales and balance in hand during the relevant period.

5. That in view of the facts and circumstances of the case and in law, the Ld. CIT(NFAC) erred in upholding the order of the Assessing Officer without appreciating the evidence submitted regarding variation in cash sales.

6. That in view of the facts and circumstances of the case and in law, the Ld. CIT(NFAC) erred in upholding the order of the Assessing Officer without appreciating that the appellant, under Section 139A of the Act read with Rule 114B, is not bound to maintain the PAN and address of purchasers when the monetary limit of the transaction is less than Rs.2,00,000/-

7. That in view of the facts and circumstances of the case and in law, the Ld. CIT(NFAC) erred in hypothetically “rejecting” the appellant’s cash book without invoking Section 145(3) of the Act, and then making an addition under section 68 of the Act.”

3. In this case, an amount of Rs.2,77,50,000/- being cash deposited during the demonetization period was added by the AO u/s 68 r.w.s. 115BBE of the Act, which was confirmed by the Id. CIT(A).

3.1. At the time of hearing, the Id. AR submitted before us that the impugned order passed by the Ld. CIT(A) is admittedly as ex-parte one. The Id. AR filed a copy of notice dated 16.01.2024 of hearing by the Ld. CIT(A) providing final opportunity to the assessee to submit/upload its submission in light of the previous notice/requisition dated 09.01.2024 within seven days of the receipt of the notice for the disposal of the present appeal. It is submitted that the Ld. CIT(A) in para-4 has stated that despite providing multiple notice/letter including dated 09.01.2024, 16.01.2024, 30.01.2024 and 06.02.2024, there has been no compliance on the part of the assessee. In this regard, the Id. AR filed a copy of acknowledgment dated 23.01.2024 of the Department, wherein, it is stated that the

response to the notice issued on 16.01.2024 is being submitted as an attachment. The copy of the said acknowledgment is reproduced as under:-

Acknowledgement Number : 910599991230124

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
PAN/TAN	AACCD2978F			
Name	DARSHAN LAL SARAF PRIVATE LIMITED			
Financial Year	2016-17			
Assessment Year	2017-18			
Proceeding Name	First Appeal Proceedings			
Notice/Communication Reference ID	100072645582			
Notice Section				
Description	[ITBA]Issue Letter			
Notice Issue Date	16-Jan-2024			
Due Date for Submission				
Communication Sent date				
Document Reference ID	ITBA/NFAC/F/17/2023-24/1059771150(1)			
RESPONSE SUBMITTED				
Remarks	Sir, Please find attached reply in response to the notice issued by your goodself and oblige. Regards			
Hash * Value Of Remarks	9376635d4e98ab647e65eeb68df1e014fe33e3e01d0187cec5f17d58f2bb5d70			
SI No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	DARSHAN LAL SARAF CITA 23.01.2024.pdf	COVERING LETTER - REPLY	180808	c7f22e523045e918d1f7044d6a1500e1143d63f7f0237175d9fce6c384b0f405
This is a system generated acknowledgement and does not require signature				
* Hash : This value will uniquely identify the uploaded files and remarks.				

3.2. The ld. AR submitted that this submission was not considered by the Ld. CIT(A) while deciding the appeal and therefore requested that the matter may be set-aside to the file of the Ld. CIT(A) for fresh adjudication for considering the submission filed by the assessee.

4. The ld. DR did not have any objection to the plea of the ld. AR for remitting the matter to the file of the ld. CIT(A) for fresh adjudication.

5. Having heard both the parties and having regard to the facts and the circumstances of the case, we find that the ld. CIT(A) did not consider the submission of the assessee filed on 23.01.2024 as stated above by the ld. Counsel for the assessee and was, therefore, not correct in holding that there was no compliance by the assessee and thus erred in passing an ex-parte order. Therefore, in order to subserve the interest of justice and to provide an opportunity to the assessee to effectively represent its case, the order of learned CIT(A) is set aside and the matter is restored back to the file of the ld. CIT(A) for adjudication of the same afresh. The Ld. CIT(A) will also grant a reasonable opportunity of being heard before deciding the appeal of the assessee. The grounds of appeal are allowed for statistical purposes.

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

Order pronounced in the open court on 8th July, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 08.07.2024.

SK

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,