

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

**BEFORE,  
SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3595/Del/2023  
(ASSESSMENT YEAR 2017-18)**

ARZ Unique Enterprises Ltd. RR-11, 2 <sup>nd</sup> Floor Mianwali Nagar Main Rohtak Road Pashim Vihar New Delhi-110 087 PAN:AAJCA4867D	Vs.	ACIT Circle-11(1) Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Ved Jain, Adv. Ms. Supriya Mehta, CA & Sh. Aman Garg, CA
Respondent by	Shri Kanv Bali, Sr. DR

Date of Hearing	22/07/2024
Date of Pronouncement	22/07/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A)", for short], dated 25/10/2023 for Assessment Year 2017-18.

**2.** The brief facts of the case are, the assessee filed its return of income on 07/11/2017 declaring loss of Rs.1,00,95,042/-. The case was selected for scrutiny through manual selection on the basis of Manual Compulsory Guidelines of CBDT. Notices u/s 143(2) & 142(1) along with questionnaire were issued and served on the assessee. In response, the assessee submitted the relevant information through online.

**3.** The assessee is engaged in the business of Hotel and Resort Services as well as running restaurant and room rent services etc. The assessee is also engaged in the business of trading of clothes. After considering the submissions of the assessee, the Assessing Officer observed that assessee has provided confirmation, ITR and Balance Sheet of the unsecured loans received from the companies listed by the Assessing Officer in his order. He observed that assessee has proved identity but failed to prove the genuineness and the creditworthiness of the party, observes that confirmation gives detail of identity only. He observed that all the parties mentioned in the Assessment Order are related to Dera Sacha Sauda and registered at the same address. They have common directors. This is the main modus operandi uses for the providing of accommodation entries. He discussed the various aspects of additions u/s 68 of the Act and also disallowed the relevant interest as bogus interest and further proceeded to make the addition on account of share application money u/s 68 of the Act.

In the summary, the Assessing Officer made the following additions:-

Particulars		Amount in Rs.
Loss as per return		1,00,95,042
<b>Additions</b>		
1	Addition u/s 68 r.w.s. 115 BBE of the Act on account of unsecured loan	1,79,82,616
2	Bogus interest expenses u/s 69C r.w.s. 115 BBE	62,79,542
3	Addition u/s 68 r.w.s. 115 BBE of the Act on account of Share Application Money	72,02,000
4	Addition u/s 68 r.w.s. 115 BBE of the Act on account of cash deposit	11,53,500
5	Addition on account of Bogus Purchase and Creditor u/s 69C of the I.T. Act	26,95,308
Total Income		3,53,12,966

4. Aggrieved with the above order, the assessee preferred an appeal before NFAC, Delhi. Before NFAC, Delhi, the assessee filed grounds of appeal and failed to prosecute the case even though the Ld. CIT(A) issued several notices which is listed in pages 4 and 5 of the order. Since, no response from the assessee, the case was dismissed in *limine*.

5. Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

*"1. On the facts and circumstances of the case, the order passed by the learned Commissioner Income Tax (Appeals), Income Tax Department ((CIT(A), ITD), National Faceless Appeal Centre (NFAC) is bad, both in the eye of law and on the facts*

*2. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in passing the order exparte without providing the assessee adequate opportunity of being heard in violation of principle of natural justice.*

*3. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs. 1,79,82,616/-made by the AO on account of unsecured loan received during the year invoking the provisions of Section 68 read with Section 115BBE of the Income Tax Act*

4. On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the disallowance of Rs. 62,79,542/- made by the AO on account of interest claimed by the assessee on the above unsecured loans invoking the provisions of Section 69C read with Section 115BBE of the Income Tax Act.

5. (i) On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs. 72,02,000/- made by the AO on account of share application money received during the year treating the same unexplained cash credits invoking the provisions of Section 68 read with Section 115BBE of the Income Tax Act.

(ii) That the above said addition has been confirmed despite the fact that the assessee has filed detailed explanation and evidences before the AO to prove identity and creditworthiness of the shareholders as well as genuineness of the transaction.

(iii) That the above said addition has been confirmed despite the fact that the AO has made the addition without conducting any independent enquiry under Section 131/ 133(6) of the Income Tax Act from the investors.

6. (i) On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs. 11,53,500/- made by the AO on account of cash deposits invoking the provisions of Section 68 read with Section 115BBE of the Income Tax Act.

(ii) That the abovesaid addition has been confirmed despite the fact that assessee has submitted the detailed explanations and submissions before the AO that the cash deposits have been made out of the cash sales made by the assessee during the normal course of business.

(iii) That the above addition has been confirmed despite the fact that the addition on account of cash will lead to double taxation since, the cash sales have already been recorded and declared by the assessee. (iv) That the above addition has been confirmed despite the fact that the AO has erred in making the addition ignoring the fact that the quantity purchase and sold being completely tallying, the addition made by the AO cannot be sustained.

(v) Without prejudice to the above the CIT(A) has erred in confirming the action of the AO in not reducing the value of cash sales to the tune of Rs.11,53,500/- already considered as income by the assessee.

7. (1) On the facts and circumstances of the case, the learned CIT(A), ITD has erred both on facts and in law in confirming the addition of Rs.

26,95,308/- made by the AO treating the purchases made by the assessee as bogus invoking the provisions of Section 69C read with Section 115BBE of the Income Tax Act.

(ii) That the above addition has been confirmed despite the fact that the AO has erred in making the addition ignoring the fact that the quantity purchase and sold being completely tallying, the addition made by the AO cannot be sustained.

(iii) That the above addition has been confirmed despite the fact that the AO has erred in making the addition ignoring the audited financial statement and various evidences submitted by the assessee without pointing out any error in those evidences.

(iv) That the above addition has been confirmed despite the fact that the AO has erred in making the addition arbitrarily rejecting the material and evidences brought on record by the assessee to show that purchases were made in regular course of business and material so purchased was sold in the regular course of business.

8. Without prejudice to the above, the learned CIT(A), ITD has erred both on facts and in law in confirming the action of AO levying higher tax rate under Section 115BBE of the Income Tax Act and not providing the set off of loss of Rs. 1,00,95,042/- despite the fact that the provisions are not applicable in the assessment year under consideration.

9. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

**6.** At the time of hearing, the Ld. AR submitted that the assessee has not represented the case before the Ld. CIT(A) and agreed that the Ld. CIT(A) has afforded several opportunities to the assessee and at the same time, he submitted that Ld. CIT(A) has not adjudicated the issues on merits. Prayed that the appeal may be remitted back to Ld. CIT(A).

**7.** On the other hand, the Ld. DR objected to the submissions of the Ld. AR and submitted that Ld. CIT(A) has provided several opportunities to the assessee and assessee has failed to utilize the

same. Further, he submitted that assessee did not provide any information for adjudication on merit. However, he agreed that the Ld. CIT(A) has not adjudicated on merits.

**8.** Considered the rival submissions and material placed on record. On perusal of the assessment order and the Ld. CIT(A) order, we find that even though the Ld.CIT(A) provided opportunity on several occasions, assessee could not appear nor complied to the notices issued. Considering the totality of facts and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Accordingly, in the interest of justice we are of the view that this matter should go back to the file of the Ld. CIT(A) for proper adjudication as per law. Assessee shall cooperate with the proceedings before the Ld. CIT(A) without taking unnecessary adjournments. Needless to say that the Ld. CIT(A) shall give proper opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Ld. CIT(A) accordingly.

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

Order pronounced on 22<sup>nd</sup> July, 2024.

Sd/-

**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 22/07/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI