

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.224/Ind/2024
(Assessment Year: 2016-17)

Shivam Enterprises 483, Lal Bangla, Lal Bhadhur Shastri Ward Tahsil Harda Harda	Vs.	NFAC Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ACDFS1727R		
Assessee by	Ms. Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	31.07.2024	
Date of Pronouncement	31 .07.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 07.02.2024 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2016-17. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the assessment order passed by Ld. AO which is contrary to

the material on records and provisions of the Act, unjust and bad in law.

2. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in not providing the copy of the approval obtained for issuing notice u/s 148

3. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in treating the return of income filed in response to notice u/s 148 as invalid.

4. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in not complying with the provisions of section 142(3) by not providing the information and documents gathered which formed the basis of inquiry and in the absence of an opportunity of being heard given to the assessee in respect such gathered material

5. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the addition made u/s 69A rws 115BBE of Rs. 5,83,27,676 as undisclosed money arising out of unexplained receipt of income

6. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the reassessment proceedings initiated on the basis of the document seized during search operations carried out in the case of third person

7. On the facts and circumstances of the case and applicable law, Ld. CIT(A) and Ld. AO erred in not providing opportunity of cross examination of the searched person

8. On the facts and circumstances of the case and applicable law, Ld. CIT(A) erred in sustaining the reassessment proceedings w/s 147 based on the material seized from search operations carried out at the premises

of third person more particularly when specific provisions are laid down u/s 153C

9. On the facts and circumstances of the case and applicable law, 1,74,98,303 Ld. CIT(A) erred in sustaining addition made u/s 69A rws 115BBE of Rs. 5,83,27,676 as undisclosed money arising out of unexplained receipt of income without giving sufficient opportunity of being heard

10. The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.”

2. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee for non-prosecution. She has pointed out that the CIT(A) has issued the notices to e-mail ID other than the e-mail ID given by the assessee in form 35. She has referred to the form no.35 and e-mail ID given by the assessee as well as the record taken from the e-filing portal of the department shown the notices issued by the CIT(A) were sent to different e-mail ID not given in the form 35 and therefore, these notices were not in the knowledge of the assessee and consequently there was no response to those notices. Thus, the Ld. AR has pleaded that the impugned order of the CIT(A) be set aside and matter may be remanded to the record of the AO for fresh adjudication.

3. On the other hand, Ld. DR has not raised any objection if the matter is remanded to the record of the AO and submitted that the AO has passed the best judgment assessment when the assessee failed to furnish any reply to the questionnaire issued by the AO as

well as supporting evidences as recorded in para 9.2 of the assessment order.

4. We have considered rival submissions as well as relevant material on record. The CIT(A) has passed ex-parte impugned order whereby the appeal of the assessee was dismissed for want of any submissions/documentary evidences despite various notices issued. The details of the notices are given by the CIT(A) as under:

s.no.	Notice issue date (through ITBA)	Date of compliance	Response of appellant
1	11.09.2023 04.10.2023 22.11.2023 08.12.2023 and 08.01.2024	26.09.2023 19.10.2023 07.12.2023 22.12.2023 and 23.01.2024	No written submission filed in support of grounds of appeal. No request of adjournment made.

4.1 Ld. AR has filed copies of the e-filing portal of the department showing the notices issued by the CIT(A) and sent to the e-mail ID carajneesh67@gmail.com & hiteshharda@gmail.com whereas the assessee has given e-mail ID in form 35 for communication of notices/orders as spplharda@gmail.com. Therefore, it is clear that

the notices were sent by the CIT(A) to the e-mail IDs which were not given by the assessee for the purpose of communication of notices. Accordingly in the facts and circumstances of the case when the appeal of the assessee was not decided on merits but was dismissed due to non-prosecution and the assessment order was also passed u/s 144B then the impugned order of the CIT(A) is set aside and matter is remanded to the record of the AO for fresh adjudication after giving an appropriate opportunity of hearing to the assessee.

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

Order pronounced in the open court on conclusion of hearing on
31.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 31.07.2024

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*