

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 2851/MUM/2024
Assessment Year: 2017-18

Amala Rathi Rayen, John Rosary Rayen, Swamathia Rosario Rayen & Ani Roselin Rayen (all legal heirs of Albert Swamathia Rayen) 3-A, Saurabh Apartments, P.K. Road, Mulund West, Mumbai – 400 080 (PAN : AEAPR6369F)	Vs.	Assistant Commissioner of Income Tax – Circle 26(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Vinita Nara
Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 08.08.2024
Date of Pronouncement : 09.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee represented by the legal heirs is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1062537274(1), dated 13.03.2024 passed against the assessment order by Assistant Commissioner of Income Tax, Circle 26(1), u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 27.12.2019 for Assessment Year 2017-18.

2. Grounds taken by the assessee are reproduced as under:

1. *The Ld. CIT(A), NFAC, has erred in passing the order u/s 250 of the Act dated 13.03.2024, in gross violation of principles of natural justice by*

passing ex-parte order and not providing sufficient/reasonable opportunity of being heard to the appellant.

2. *The Ld. CIT(A), NFAC, has erred in passing an order without dealing with the merits of the matter.*
3. *The Ld. CIT(A), NFAC, erred in confirming the action of Ld. AO in treating the 20% of the total cash deposit during demonetization period, totaling to Rs. 41,73,950/- as unexplained income u/s 69A of the Act. The said addition is made purely on the basis of surmises, conjectures and presumptions.*
4. *Without prejudice to the above, provision of section 69A are not applicable to the facts of the present case.*
5. *The Ld. AO has erred in not reducing such cash deposit of Rs. 41,73,950/- which is shown as business receipts from sale of products, from the normal business income. resulting into double addition.*
6. *The Ld. CIT(A), NFAC, erred in confirming the Ld. AO has erred in applying section 115BBE to the additions made of Rs.41,73,950/-*
7. *The Ld. AO has erred in levying interest u/s 234B and 234C of the Act.*
8. *The Ld. AO has erred in initiating penalty proceedings u/s 271(1)(c) of the Act.*

3. In ground no.1, assessee has contested the *ex-parte* order passed by the ld. CIT(A) which is in gross violation of principles of natural justice without providing reasonable opportunity of being heard to the assessee. At the outset, we note that there is a delay of 6 days in filing the present appeal for which assessee has placed on record an affidavit explaining the reasons for this brief delay. On going through the same, we find it appropriate to condone this brief delay and take up the matter for adjudication.

4. In reference to ground no.1, we perused the order of ld. CIT(A) to note that the appeal of the assessee was fixed for hearing on three occasions and none of them were availed by the assessee to represent the case for substantiating the claim made. Even before the ld. Assessing Officer, the submissions made are partial which led to

addition made in the present case in respect of deposit of cash in the bank account.

5. Before us, ld. Counsel for the assessee prayed for restoring the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication which was objected upon by the ld. Sr. DR. However, in the interest of justice and fair play, we find it appropriate to remit the matter back the file of ld. CIT(A) for *denovo* meritorious adjudication of the grounds taken at the first appellate stage. We direct the assessee to be diligent and cooperative in attending the hearings and make its submissions for expeditious and effective disposal of the appeal. It should not seek adjournments unless warranted by compelling reasons.

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

Order is pronounced in the open court on 09 August, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09 August, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai