

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 970/Del/2024
Asstt. Yr: 2017-18**

Along with

**S.A. No. 151/Del/2024
(In ITA No. 970/DEL/2024)
Assessment Year: 2017-18**

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| Manisha Sharma, BH-422 East Shalimar Bagh, New Delhi-110088 | <u>Vs</u> | Income-tax Officer, Ward-43(7), Delhi |
| PAN- BGQPS 1704 Q | | |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri Mohd. Azeem, Adv.; Shri Ankit Kumar, CA; & Shri Sandeep Sharma, CA | |
| Department represented by | Shri Amit Shukla, Sr. DR | |
| Date of hearing | 07.08.2024 | |
| Date of pronouncement | 09.08.2024 | |

ORDER

PER KUL BHARAT, JM:

The captioned application has been moved by the assessee to stay the recovery of demand arising out of assessment order dated 26.12.2019 passed by the Assessing Officer for A.Y. 2017-18.

2. During the hearing of stay application, learned counsel for the assessee prayed for hearing of the appeal on merit. Considering the nature of the issues involved, we are of the considered view that the appeal itself can be disposed of on merits instead of considering the stay application only. Accordingly, we proceed to dispose of the assessee's appeal on merit, arising out of the order dated 10.01.2024, passed by the CIT(A) National Faceless Appeal Centre (NFAC), Delhi pertaining to A.Y. 2017-18.

3. Grounds of appeal raised by the assessee are as under:

“1. That the Ld. CIT(A) NFAC has erred in law and in fact in confirming the assessment order passed by the AO assessing the total income at Rs. 75,09,310/- as against returned income of Rs. 13,46,310/-.

2. That the Ld. CIT(A) NFAC has erred in deciding the appeal without calling/ downloading the replies submitted by the appellant during assessment proceedings and thus ignoring the vital documents such as cash flow statement, purchase bills, ledgers, and VAT returns and thus the order of CIT(A) NFAC is against the principles of natural justice.

3. That the Ld. CIT(A) NFAC erred in confirming the action of the AO based upon surmises and conjecture without there being any evidence contrary to the contention of the assessee which is duly supported by documents.

4. That the Ld. CIT(A) NFAC has erred in confirming the addition of Rs. 61,63,000/- being cash deposited in bank accounts without appreciating that the said cash was part of the cash account submitted with the submissions made before Ld. AO and was sourced from sales duly accepted by the VAT department, out-of-cash withdrawals, etc.

5. That the Ld. CIT(A) NFAC has erred in confirming the action of the AO in rejecting the books of accounts by invoking the provisions of sec. 145(3) without even looking at the documents on record and without

appreciating that no specific defect in the books of account was pointed out by the AO which is not even part of the assessment order.

6. *That the Ld. CIT(A) NFAC has erred in confirming the order of the AO ignoring the position of law that no addition u/s 68 can be made where books of account had been rejected by the AO u/s 145(3) and again relying upon the same books of accounts for the purpose of section 68.*

7. *That the Ld. 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.*

8. *That the appellant craves leave to add, or amend any grounds of appeal.”*

3. Facts of the case, in brief, are that for A.Y. 2017-18 the assessee filed her return of income electronically on 05.11.2017 declaring income of Rs.13,46,310/-. The case was selected for E-scrutiny under Computer Aided Scrutiny Selection (CASS) on account of abnormal increase in cash deposits during demonetization period. By issuing statutory notices the AO required the assessee to explain the source of cash deposit of Rs. 61,63,000/-. In response the assessee explained that Rs. 17,09,507/- were received from debtors and rest amount was received from cash sale. Rejecting the assessee's contention the AO completed the assessment at taxable income of Rs. 75,09,310/- by adding Rs. 61,63,000/- as unexplained cash credit. Aggrieved against it the assessee preferred appeal to the learned CIT(A) who also affirmed the action of Assessing Officer. Aggrieved against it the assessee is in appeal before the Tribunal.

4. Learned counsel for the assessee at the outset submitted that the assessee is maintaining proper quantitative records which are subject to audit on year to year basis. He submitted that since the learned NFAC has dismissed the assessee's appeal without calling/downloading the replies submitted by the assessee during assessment proceedings, the order of learned First Appellate Authority may be set aside and the matter may be restored to his file for fresh decision after affording reasonable opportunity of hearing to the assessee and taking into account the documentary evidence furnished by the assessee in support of her claim.

5. Learned DR opposed the submissions and supported the orders of authorities below.

6. We have heard rival submissions and perused the material available on record. The stand of the assessee is that the First Appellate Authority has disposed of the appeal without calling/ downloading the replies submitted by the assessee during assessment proceedings in the form of cash flow statement, purchase bills, ledgers, and VAT returns etc. Considering the totality of facts of the present case and to be fair to both the parties as well as to sub serve the interests of natural justice and to verify the veracity of assessee's claim, we hereby set aside the order of learned CIT(A) and restore the matter to his file for fresh decision, after affording adequate opportunity of being heard to the assessee and taking into

account the documentary evidence, if any, furnished by the assessee in support of her claim. Grounds are allowed for statistical purposes.

7. In the light of aforesaid, the appeal is allowed for statistical purposes and the stay application is dismissed, being infructuous. However, the assessee would be at liberty for seeking stay of outstanding disputed demand before learned CIT(Appeals). Dismissal of stay application would not affect the right of assessee for filing application before learned CIT(Appeals) for making prayer for stay of tax demand.

Order pronounced in open court on 09th August, 2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 09.08.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI