

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, DELHI**

**BEFORE MS.MADHUMITA ROY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 720/Del/2024
(Assessment Year 2012-13)**

Kayoom Khan Sh. Sirajuddin 206, Karanki, P.O. Daula, Near Post Office, Sohna, Gurugram – 122103 Haryana	Vs.	Income Tax Officer, Ward 2(3) HSIIDC Building, Vanija Nikunj, Udyog Vihar, Phase-V Gurgaon, Haryana – 122001
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: BBGPK8635M		
Appellant	..	Respondent

Appellant by :	Sh. Ajay Wadhwa & Sh. Ujjwal Jain
Respondent by :	Sh. Om Prakash

Date of Hearing	06.08.2024
Date of Pronouncement	07.08.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 20.12.2023 passed by National Faceless Appeal Centre (NFAC), Delhi arising out of the order dated 26.11.2019 passed by the ITO Ward 2(3), Gurgaon under Section 147 r.w.s 144 of the Income Tax Act 1961 (hereinafter referred to as ‘the Act’) for Assessment Year 2012-13.

2. The brief facts leading to the case is this that on the basis of NMS information that cash deposit amounting to Rs.68,27,000/- and contract receipt of Rs.6,85,780/- by the assessee, the case of the assessee was reopened under Section 148 of the Act upon recording of reasons. Notice under Section 142(1) of the Act dated 06.05.2019 along with questionnaire followed by further notices under Section 142(1) of the Act dated 08.07.2019 and 30.07.2019 along with questionnaire was served upon the assessee but without any result. The assessment, therefore, was finalized *exparte* on merits upon making addition of Rs.1,36,54,000/- in the hands of the assessee which stood confirmed by the First Appellate Authority. Hence, the instant appeal before us.

3. Before the First Appellate Authority the assessee was issued notices intimating the date of hearing of the matter. The assessee, however, was not been represented before the First Appellate Authority and finally in the absence of any written submission or any assistance rendered by the assessee, the appeal was finalized confirming the addition made by the Ld. AO.

4. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee submitted before us that the assessee belongs to family of farmers and neither educated nor knows the niceties of law; not familiar with the complex of the Income Tax Laws and Procedures. The case, therefore, before the Assessing Officer could not properly been represented. Moreso, in order to represent the case of the assessee before the Ld. CIT(A), one Mr.

Ravi Kumar was engaged who unfortunately passed away during Covid-19 pandemic and the assessee was left without any professional help, neither could focus nor could pursue the appeal and thus was disposed of ex-parte. Such facts have also been recorded by way of an affidavit affirmed by the assessee himself on 01.08.2024 which is being part of the record before us. Under this facts and circumstances of the matter, the Ld. Counsel appearing for the assessee, therefore, prayed for a further grant of opportunity to be heard by the department in order to enable the assessee to represent its case effectively. Such prayer has not been objected by the Ld. D.R with all his fairness.

5. Having heard the Ld. Counsels appearing for the parties and having regard to the facts and circumstances of the matter particularly the explanation rendered by the assessee for not having been able to appear before the authorities below as seems to be genuine, in order to prevent the miscarriage of justice we would like to grant a further opportunity of being heard to the assessee by the department. We thus, set aside the issue to the file of the Ld. AO with the further direction upon him to consider the same afresh upon granting opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. We also make it clear that in the event the assessee does not co-operate with the Ld. AO, the said authority would be at liberty to proceed with the matter strictly in accordance with law and to pass a

reasoned order. The assessee's appeal, is, therefore, allowed for statistical purposes.

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

Order pronounced in the open court on 07.08.2024

Sd/-
(Avdhesh Kumar Mishra)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 07.08.2024

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI