

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1323/Del/2024
Assessment Year: 2017-18

Shri Radhika Jewellers,
357, Anaj Mandi,
Shahdara,
Delhi – 110 032.

Vs Income Tax Officer,
Ward -58(7),
New Delhi.

PAN: AAKFS9100M

(Appellant)

(Respondent)

Assessee by	: Shri Baldev Raj, CA & Shri Maneesh Upneja, CA
Revenue by	: Shri V.K. Dubey, Sr. DR
Date of Hearing	: 29.07.2024
Date of Pronouncement	: 27.08.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 25.01.2024 of the Commissioner of Income Tax (Appeals), NFAC, Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. CIT(A), Delhi-20/10520/2019-20 arising out of the appeal before it against the order dated 28.12.2019 passed u/s 143(3) of the Income Tax Act,

1961 (hereinafter referred as 'the Act'), ITO, Ward 58(7), Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record.

3. On hearing both the sides, it comes up that the assessee has raised ground No.2 that proper opportunity of hearing was not provided to the assessee by the AO. It can be observed that before the FAA while challenging the assessment order, the assessee had not raised any grounds on merits and has raised only the following grounds:-

“1. The Notices u/s 142(1) dated 08.11.2019 and dated 24.12.2019 was not served upon the assessee and proper opportunity of being heard was not provided. Earlier notice dated 17.01.2019 was duly replied and there after no notice was issued for a long period. Notices dated 08.11.2019 and 24.12.2019 were purportedly issued but never served by even SMS, Email or any other mode and so the assessee was not aware about the same and was so he was not provided with the proper opportunity of being heard.

2. The assessee reserves the right to add or modify any grounds of appeal at the time of hearing. In view of above the impugned assessment is liable to be quashed.”

4. It comes up that the NFAC, has dismissed the appeal of the assessee by the following relevant observations:-

“4. Appellate proceedings

4.1 The notices of hearing were issued to the assessee on 24.02.2021, 20.12.2023 and 10.01.2024. In response to the notices, the assessee has not filed any written submissions. In the order sheet, the appellant had requested for a Virtual Hearing via video conferencing facility. Accordingly, as per the faceless appeals procedure, a notice dated 10.01.2024 was sent to the appellant asking whether it wished to avail of the video conferencing facility. However there has been no response to the said notice till date. Accordingly, it is presumed that the appellant no longer wishes to avail of the said facility and hence the appeal is being

decided on the basis of the written submissions and other documents submitted in the appellate proceedings.

5. Appellant's submissions

5.1. During the appellate proceedings, no submissions or other documents have been filed by the assessee. The only material on record other than the grounds of appeal is the statement of facts which is reproduced as under:-

The assessee is a partnership firm. The assessment has been made u/s143(3) without service of notice u/s 142(1). The tax has been imposed on Rs. 55,00,000/- u/s 115BBE without affording any opportunity of being heard to the assessee.

In the order sheet noting received on 18.03.2021 the assessee stated the following

The assessee, a partnership firm do not like to opt for Vivad Se Vishwas Scheme 2020. Written Submission is as follows: The assessment has been made u/s 143-3 ex-parte, without proper service of Notice. The Notices dated 08.11.2019 and dated 24.12.2019 were never served upon the assessee either by SMS or email or any other mode and so the assessee was not aware about the same and was so he was not provided with the proper opportunity of being heard. It may kindly be noted that the assessee was fully cooperating the assessment proceedings and Earlier Notices issued were duly replied for. However, thereafter no notice was issued for a long period and after a long gap of almost 11 months, Notices Dt. 8.11.2019 and Dt. 24.12.2019 were purportedly issued, but the same were never served upon the assessee either by Post, SMS or email. Following this, the assessment was made ex-parte, without affording any opportunity of being heard, imposing Tax us 115BBE on Rs. 55,00,000-, which was a declared Sales amount, duly recorded in Books of Account, which were duly Audited and accepted by the Deptt, without affording any opportunity of being heard to the assessee. In view of above the impugned assessment is liable to be set aside and be quashed. In case the Ld Appellate Authority takes any adverse view, in the interest of Justice, the assessee also requests your goodself to kindly Provide for an opportunity for Personal or Video hearing through any viable mode. inconvenience is highly regretted. Thanking You, Yours Sincerely,

6. Appellant Findings

Before considering the grounds of appeal filed by the appellant, it is pertinent to note that in order to decide this appeal in a timely manner notices/ communications were sent to the appellant on 24.02.2021,

20.12.2023 and 10.01.2024. However, there has been no response from the appellant till date. The appellant has neither filed any written submissions nor any evidence supporting the grounds of appeal. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on his part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly shows that the appellant is not interested in pursuing this appeal in any productive manner. Under these circumstances, this appeal is liable to be dismissed in terms of the ratio of the judgments of the Hon'ble Apex Court and the various High Courts."

5. The Id. DR has although defended the order of the Id.FAA, however, what is material is that in the assessment order, the AO mentioned of services of notice u/s 142(1) on 08.11.2019 through ITBA portal which was delivered upon the assessee on its user id at e-filing portal. In the assessment order, the AO observes that in spite of notices, no submissions were filed. Thus, we are of the considered view that the order of the FAA is not sustainable in law as without adjudicating the question of fact, as to if the notices u/s 142(1) dated 08.11.2019 and 24.12.2019 were actually served upon the assessee the impugned order is passed by the NFAC. The assessee had not challenged the addition on merits and if the NFAC, was of the considered opinion that the grounds as raised before it were not sustainable *qua* the question of non-service of notice, then, the assessee should have been given an opportunity to contest on merits. That being not done to decide the addition on merits has prejudiced the assessee.

6. In the light of the aforesaid, we consider it an appropriate case to set aside the impugned order of the NFAC and to restore the grounds as raised on merits as well as law, for afresh adjudication, in the light of the aforesaid observations.

7. In the result, the appeal is allowed for statistical purposes only.

Order pronounced in the open court on 27.08.2024.

Sd/-

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 27th August, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi