

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3450/MUM/2024 (A.Y: 2018-19)**

Istore Direct Trading LLP B3, B4, B5, Floor-B, Plot 405/406, 7C, Kamanwala Chambers, Bhagoji Keer Marg, Mahim, Mumbai – 400016.	Vs. DCIT 27(1), Mumbai IT-office, Vashi Railway Station Building, Navi Mumbai – 400703.
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PAN: AAFFI3193R

(Appellant)

(Respondent)

Assessee Represented by	:	Shri. Bhadresh Doshi
Department Represented by	:	Smt. Pradnya R. Gholap (Sr. D.R.)
Date of conclusion of Hearing	:	20.08.2024
Date of Pronouncement	:	05.09.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 09.05.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the



“CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2018-19.

2. The brief facts as culled out from the proceedings before the lower authorities are that the assessee firm filed its return of income for the A.Y. 2018-19 u/s. 139(1) on 30.10.2018 declaring the total income at Rs.33,81,645/-, being the income declared under the head income from business or profession. The assessee firm is into business of trading of various food products. It sources the goods from local markets in Mumbai and Navi Mumbai. It then reprocesses certain products and does repackaging and branding before selling to the final consumer. The assessee firm had shown sale of goods at Rs. 17,81,44,904/-. In order to examine the business expenses, assessee was issued notice u/s. 143(2) of the Act which was served on the assessee on 28.09.2019. Subsequently, notice u/s. 142(1) was issued on 22.01.2020 for which there was no response from the assessee. After issuing 2-3 reminders on various dates, the assessee has finally filed his reply on 09.10.2020 and 05.11.2020. After considering the reply of the assessee, the Ld. AO has disallowed the various expenses claimed as business expenses by the assessee and the final assessment was completed as under:



	Description	Amount in Rs.
	Net taxable income as per CPC determined u/s 143(1)	Rs.33,81,650
Add:	Disallowance of Expenditure, as discussed in para 4 above	Rs.61,54,799
Add:	Disallowance of expenditure, as discussed in para 5 above	Rs.12,00,000
	Income from business	Rs.1,07,36,449

3. Aggrieved by the impugned order, the assessee is in appeal before us and has raised following grounds:

1. *“On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the order of the Assessing Officer, Assessment Unit, Income-tax Department, in respect of the disallowance of Rs. 14,19,253/- by limiting the claim of deduction of the following expenses by 10% on an adhoc basis disregarding the evidence submitted in respect of the nature of the expenses incurred.*

Sr. No.	Particulars	Amount of Expenses	Adhoc disallowance restricted to 10%
1.	Freight expense	11,55,133	1,15,513
2.	Salary Expense	24,59,800	2,45,980
3.	Rent Expense	31,78,500	3,17,850
4.	Packing Expense	70,24,453	6,02,446
5.	Other Expense	6,31,063	63,107
6.	Repairs & Maintenance	2,73,487	27,284
7.	Printing and Stationary Expense	4,70,093	47,010
	Grand Total		14,19,253

2. *The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in disallowing Rs. 33,16,293 i.e. 30% of the following expenses due to Non-deduction of TDS. This 30% disallowance is computed after disallowance of 20% of expenditure as specified in Ground 1. The learned CIT(A) has erred in not appreciating the facts that TDS has been deducted where*



applicable and the disallowance has been made on an adhoc basis on the entire amount disregarding

- a. *The non-applicability of TDS in cases where payments are below the threshold limit specified in law; and*
- b. *non-applicability of disallowance in cases where TDS has been validly deducted and deposited to the income-tax department.*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount of Disallowance u/s. 40(a)(ia)</i>
<i>1.</i>	<i>Freight expense</i>	<i>2,77,232</i>
<i>2.</i>	<i>Salary Expense</i>	<i>5,90,352</i>
<i>3.</i>	<i>Rent Expense</i>	<i>7,62,840</i>
<i>4.</i>	<i>Packing Expense</i>	<i>16,85,869</i>
	<i>Grand Total</i>	<i>33,16,293</i>

3. *The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in disallowing of professional fees of Rs. 12,00,000 paid to Krinjal Kenia disregarding her work experience and expertise in the food industry solely on the basis that she is a relative of the designated partner.*
4. *The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred that we were given ample of opportunities of producing facts and we have not done the same. However we have not only made detailed submissions but also requested for personal hearing wide video conferencing to the learned commissioner of Income-tax for which no opportunity was provided. This violates the right to Natural Justice of the assessee and thus the order being bad in law.*
5. *The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in mentioning in the entire order the following;*
 - a. *That the assessee has not submitted any documents for any expenses that were disputed, wherein all the relevant documents were duly submitted in the all opportunities that were provided.*
 - b. *The Commissioner erred in stating in the para 6.2 of the order that the assessee submitted evidences pertaining to AY 2015-16 instead of AY 2018-19. The commissioner has overlooked the documents as the*



assessee has submitted all the documents and evidences pertaining to the relevant year under appeal.

Thus, the order passed to that extent is bad in law.

6. *The learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred in levying a penalty u/s 270A of the Income tax Act.*
 7. *The appellant craves a right to add, to delete or to modify any of the main grounds of appeal mentioned hereinabove.*
4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. At the very outset, it has been argued on behalf of the assessee/appellant that the Ld. CIT(A) has not considered the submissions or documents of the appellant submitted during the appellate proceedings on the ground that the appellant has filed the submissions for A.Y. 2015-16 instead of A.Y. 2018-19 under consideration and therefore, the submissions submitted by the assessee has not been considered by the Ld. CIT(A). It is further argued that in case the submissions of the assessee had been considered by the Ld. CIT(A), the appeal would have been allowed. It is therefore vehemently argued that the rights of the assessee has been prejudiced by non-considering of the submissions and the material by the Ld. CIT(A) on the wrong presumptions that the submitted material pertain to the A.Y. 2015-16 and not A.Y. 2018-19 under consideration.



5. The assessee/appellant has submitted paper book-(1) containing acknowledgment of the submissions filed before the Ld. CIT(A) on 12.07.2023 from page 1 to 6; (2) the submissions filed by the Ld. CIT(A) from para 7 to 19; (3) acknowledgement of submissions before the Ld. CIT(A) on 30.04.2024 at page 20. It is further stated in the paper book that the documents mentioned at serial no. 1 to 3 are the submissions filed before the Ld. CIT(A) during the appellate proceedings. It is therefore argued that the matter may be restored to the file of the Ld. CIT(A) with the directions to consider the submissions of the assessee.

6. We have also heard the Ld. DR who has relied upon the judgment of the Ld. CIT(A) and the assessment order. We have considered the submissions of the parties. On perusal of the paper book from page 1 to 20, it is noticed that all the submissions are pertaining to A.Y. 2018-19. Nothing contrary has been brought on record by the revenue to suggest that the submissions contained in paper book of the assessee were not placed before the Ld. CIT(A).

7. In view of these facts, the observation of the Ld. CIT(A) in para no. 6.2 of the impugned order are found to be factually incorrect which are reproduced as under: -



6.2 *“During the course of appellate proceedings, the appellant has filed its submissions by way of statement of facts. However, it is seen that the appellant had filed the submissions for the A.Y. 2015-16 instead of A.Y. 2018-19, which is pending for disposal before the CIT(Appels). No other submissions have been made except filing of the ledger extract of the various expenses and some of the vouchers.”*

8. Since the observation as extracted above in para no. 6.2 of the impugned order are factually incorrect and contrary to the material submitted before the Ld. CIT(A) and the Ld. CIT(A) has not considered the written submissions of the appellant as contained in paper book submitted before us; therefore, the impugned order is not legally sustainable in the eyes of law and is accordingly set aside with the direction that the matter is restored to file of the Ld. CIT(A) with the directions to consider the submissions of the assessee/appellant already submitted or the assessee/appellant may submit the submissions in support of his grounds in appeal within a period of 60 days from this order.
9. In the result, appeal filed by the assessee is allowed in above terms for statistical purposes.

Order pronounced in the open court on 05.09.2024

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)



Mumbai / Dated 05.09.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai