

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G”, NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO. 633/Del/2023		
A.Y.R. : 2011-12		
SURINDER BHANDARI, SF-4, KB-6, KAVI NAGAR, GHAZIABAD UTTAR PRADESH-201 001 (PAN: AMFPB0133L)	VS.	ITO, WARD 2(3) GHAZIABAD
(APPELLANT)		(RESPONDENT)

Appellant by : None
Respondent by : Shri Yogesh Nair, Sr. DR.
Date of hearing : 09.09.2024
Date of pronouncement : 10.09.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 09.01.2023, relating to assessment year 2011-12. The solitary ground raised in the appeal read as under:-

“The Ld. CIT(A) has erred in law in dismissing the appeal by confirming the penalty of Rs. 1,50,000/- which is unjustified against the provision of law as well as against the concept of natural justice and equity.”

2. Briefly stated facts are that on the basis of AIR information the assessee has made cash deposits of Rs. 1,07,20,000/- during F.Y. 2010-11 relevant to A.Y. 2011-12, a notice u/s. 148 of the I.T. Act, 1961 dated 27.03.2018 was issued after obtaining prior approval from the Pr. Commissioner of Income Tax, Ghaziabad. In response to this notice the assessee has not filed ITR for A.Y. 2011-12. The assessment was completed u/s. 144 of the Income Tax Act, 1961 on 27.12.2018 with the total addition of Rs. 1,07,20,000/-. The penalty proceedings u/s. 271B were initiated as assessee failed to get his accounts audited under the provisions of section 44AB and did not submit the report of CA during the course of assessment proceedings. A show cause notice u/s. 271B was issued on 27.12.2018 fixing the date for compliance on 29.01.2019 but on the said date, the assessee neither appeared nor furnished any written reply. Further, the AO again issued a show cause of penalty proceedings u/s. 271B on 07.05.2019 but the assessee failed to file any written submission. Lastly, the AO stated that the total turnover of the business of the assessee after adjusting sales was Rs. 6,33,46,974/- which exceeded limit of Rs. 60 lacs, therefore, the AO imposed penalty u/s. 271B of Rs. 1,50,000/-. Upon assessee's appeal, Ld. CIT(A) confirmed the AO's action, as no submission was made by the assessee.

3. Aggrieved with the above Ld. CIT(A)'s order, assessee is in appeal before us.

4. We have heard Ld. DR and perused the records. None appeared on behalf of the assessee.

5. Upon careful consideration, we find that assessee has made a plea in the Grounds of Appeal that action of the Ld. CIT(A) in confirming the penalty is unjustified and against the provisions of law as well as against the concept of natural justice and equity. We further note that AO's as well as Ld. CIT(A)'s orders are exparte. Therefore, in our considered opinion, in the interest of justice, the matter is restored back to the file of the Assessing Officer with the directions to consider the issue in dispute afresh, after giving adequate opportunity of being heard to the assessee. Assessee is also directed to cooperate with the Assessing Officer during the proceedings.

5. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 10/09/2024.

**Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

SRB

Copy forwarded to:-

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

Assistant Registrar