

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 1075/Kol/2023
Assessment Year: 2017-18**

**Ansar Ali Molla,
Baliguri Patharghata,
P.O. Chakpanchuria, P.S.-
Newtown, Kolkata – 700135
[PAN: BLHPM4773K] Appellant**

vs.

**Income Tax Officer,
Ward – 50(2), Kolkata,
Aayakar Bhawan, Uttarapan Complex,
Ultadanga, Maniktala Civic Centre,
Kolkata – 700054 Respondent**

Appearances by:

Assessee represented by : Anil Kochar, Adv.
Aryan Kochar, Adv.

Department represented by : Prabir Gupta Choudhury, Addl. CIT

Date of concluding the hearing : September 05, 2024

Date of pronouncing the order : September 09, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Learned. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated

15.09.2023 arising out of Assessment Order dated 24.12.2019, passed under Section 144 of the Act.

2. The Assessee has raised the following grounds of appeal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the factual aspect of the issue involved in appeal before the Ld. CIT (A) was duly explained with relevant evidences with reference to the grounds taken by the appellant and that the source of the deposits in the bank having been explained, the Ld. CIT (A) ought not to have rejected the same.

3. For that the source of deposits in the bank having been duly explained by the appellant, the Ld. CIT(A) ought to have accepted the evidences adduced before him and in this view of the matter the order of the Ld. CIT(A) is perverse.

4. For that the Ld. CIT (A) ought to have accepted the explanation tendered by the appellant as duly noted in the grounds of appeal and statement of facts and ought not to have dismiss the appeal of the appellant on the alleged grounds.

5. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."

3. At the outset, the Ld. AR stated that factual aspects of the issues involved in the appeal are although properly explained before the Learned CIT(A). However, he did not consider the same by simply dismissing the appeal of the assessee, therefore, the impugned order passed by the CIT(A) is perverse and liable to be set aside. Moreover, the assessment order was passed by the Learned Assessing Officer was an ex-parte order passed under Section 144 of the Act. Therefore, he prayed before the Bench stating that another opportunity may be given to the assessee by setting aside the issue involved in the appeal to the file of the Learned Assessing Officer so that the assessee can represent its case properly before the Ld. A.O. in order to substantiate its claim. On the other hand, the Learned Departmental Representative objected to the such prayer made by the assessee before the Bench.

4. We after hearing the rival submissions to the parties and perusing the material available on record, we find that the assessee could not represent its case properly before the Learned Assessing Officer and the Learned Assessing Officer passed the assessment order under Section 144 of the Act. Similarly, the assessee has failed to substantiate its claim before the Learned CIT(A) in proper manner, where, the appeal of the assessee was dismissed. We therefore, interest of natural justice and fair play to the parties it is necessary to set aside the issues involved in the appeal to the file of Assessing Officer with a direction to re-examine the issue afresh after affording a reasonable opportunity of being heard to the assessee. In terms of the above, appeal of the assessee is allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Kolkata, the 9th September, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 09.09.2024.
AK, PS

Copy of the order forwarded to:

- 1 Ansar Ali Molla
2. Income Tax Officer, Ward – 50(2), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches