

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Shamim Yahya, Accountant Member  
Sh. Laliet Kumar, Judicial Member**

**ITA No. 2889/Del/2017 : Asstt. Year : 2012-13**

M/s Vogue Fabrics, C/o M/s RRA Taxindia, D-28, South Extension, Part-1, New Delhi-110049	Vs	DCIT, Circle, Paipat, Panipat
(APPELLANT)		(RESPONDENT)
<b>PAN No. AABFV1872E</b>		

**Assessee by : Dr. Rakesh Gupta, Adv. &  
Sh. Deepesh Garg, Adv.  
Revenue by : Sh. Yogesh Nair, Sr. DR**

<b>Date of Hearing: 10.09.2023</b>	<b>Date of Pronouncement: 11.09.2023</b>
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**ORDER**

**Per Laliet Kumar, Judicial Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A), Karnal dated 10.02.2017.

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

*"1. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate disallowance of Rs.24,49,474/- on account of depreciation on building.*

*2. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.3,81,203/- on account of depreciation on car by treating it as personal element.*

*3. That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.33,283/- on account of depreciation on handloom.*

4. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making aggregate disallowance of Rs.55,66,902/- on account of indirect expenses.*

5. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.11,80,000/- on account of cash deposits in bank account of assessee.*

6. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.33,75,990/- by treating it as income from other sources instead of income from business and profession as claimed by the assessee.*

7. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 1,51,331/- on account of interest.*

8. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.36,00,000/- by treating it as alleged unexplained income u/s 69A and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

9. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.36,47,358/- by treating it as alleged unexplained income u/s 69A and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

10. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making various additions/disallowance in the impugned assessment order and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

11. *That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

3. At the outset, the Id. AR for the assessee has submitted that the assessee filed an application for admission of additional evidence whereby the assessee sought to file the following evidence on record and he drew our attention to following paragraph of application:

*"This income was earned and received pursuant to the Patta agreement dated 01.04.2011 entered into by the assessee firm with Sh. Satpal Singh Kang. During the course of assessment proceeding, no question regarding the agricultural income was asked and all that was asked vide notice dated 04.03.2015 was about the total area of the land etc. as discussed in para 4.1 of the assessment order. Nothing was asked about agricultural land/agricultural income. Ld. CIT(A) also has passed a non-speaking order vide para 6.2 of the appeal order. Even pattanama for AY 2009-10 and AY 2014-15 regarding similarly earned agricultural income are also enclosed as additional evidences (PB 873-878). Both the authorities have ignored the existence of agricultural land and agricultural income earned including in preceding and in subsequent years which is evident from PB 812, 493, 513, 833, 855.*

*Therefore, the appellant seeks to place the copy of patta agreements in support of existence of agricultural land and agricultural income as additional evidence which may please be admitted as the issue of cash deposit was decided without giving any opportunity of hearing and in any case it is vital for adjudication of the relevant Ground of Appeal and goes to the root of the matter and is merely corroborative to the fact of agricultural income.*

**Regarding Ground Nos. 8 & 9**

*It was explained that cash was deposited by the partners of the appellant firm namely Sh. Anil Dutt and Sh. Sunil Dutt out of the cash received by them on cancellation of agreement to sell entered into by them. Appellant seeks to place the following evidences as additional evidences:*

*a) Agreement to sell dated 08.04.2009 together with copy of account of Sh. Uttam Chand in the accounts of Sh. Anil Dutt and Sh. Sunil Dutt. (PB 879- 883) to show that agreement to sell was entered into by the partners of the appellant firm who paid money as advance.*

*b) Copy of return of income and balance sheet of Sh. Anil Dutt and Sh. Sunil Dutt for AY 2010-11 showing the amount of Rs.33,00,000/- each given as advance for land. (PB 884-929)*

*These evidences are in support of the explanation already given by the appellant during the assessment and appeal proceeding that cash was deposited by the partners when they received back the amount on cancellation of the agreement.*

*Therefore such evidences are merely corroborative evidences in support of the facts submitted in the proceeding before the authorities below and go to the root of the matter and are vital for effective adjudication of the relevant grounds of appeal."*

4. It was submitted by the Id. AR that because of the illness of the mother of Id. AR, the assessee has not filed evidence before the Id. CIT(A). It was submitted that these evidence goes to the root of the matter and are necessary to be considered for the adjudication and determination of the correct income of the assessee. It was submitted that these documents are primarily Government documents and no prejudice would be caused to the Revenue if the additional evidences are admitted by this Tribunal. Further, it was submitted that on account of the illness of the mother of the Id. AR, who was admitted in Moolchand Hospital, New Delhi for renal treatment between period 01/04/2016 to 31/03/2017, therefore, there was delay in filing the appeal before the Tribunal. It was further submitted by the Id. AR that the delay in filing the appeal before the Tribunal may be condoned.

5. On the other hand, the Id. DR vehemently opposed the condonation of delay in filing the appeal. It was submitted in paragraph 3.4 of the Id. CIT(A), the Id. CIT(A) has mentioned that six opportunities were given to the assessee to file the reply but the assessee failed to avail the opportunities. Further, it was submitted that the application for filing for additional evidence Rule 29 is not maintainable and the same is required to be dismissed.

6. We have heard the rival submissions and perused the material available on record. The perusal of paragraph 3.4 of the Id. CIT(A) makes it clear that the Id. CIT(A) has given six opportunities to the assessee to file the reply/evidence/document before the Id. CIT(A). However, when

the above said paragraph is read with the evidences filed before us showing that the mother of the Id. AR admitted in Moolchand Hospital, New Delhi for renal treatment from 01/04/2016 to 31/03/2017, then we are of the opinion that the explanation given by the assessee for not filing these documents before Id. CIT(A) and also for reasonable cause for not filing appeal with the delay of 17 days before us seems to be plausible and sufficient for not filing the appeal before us and documents/evidence before Id. CIT(A). Considering the totality of the facts and more particularly the medical evidence of the mother of the Id. AR on record, we are of the opinion that the assessee has duly explained delay in filing the appeal before the Tribunal. Accordingly, the delay in filing the appeal is condoned.

7. Now coming back to the admission of the additional evidence, we are of the considered opinion that the assessee was prevented from filing the above noted document/evidence on account of illness of mother of the Id. AR. Furthermore, these documents were available with Id. AR who on account of the illness of the mother of the Id. AR and was not in a position to file these document before the First Appellate Authority.

8. In view of the fact that these documents goes to the root off the matter and are necessary to be considered for adjudication of the correct income, we are of the opinion the matter is required to remanded to the file of the Id. CIT(A) with direction to decide the issue afresh. Accordingly, we issue the following directions:

1. That the Id. CIT(A) shall admit the evidence filed before us.

2. That the Id. CIT(A), if deem it appropriate to seek the remand report from the Assessing Officer on these newly admitted documents/evidence filed before us.
3. The Id. CIT(A) shall decide the issue after affording an opportunities of hearing and following the principle of natural justice and thereafter shall pass a reasoned speaking order dealing with the contention of the assessee.
9. In the light of the above, the appeal of the assessee is allowed for statistical purpose.
- Order Pronounced in the Open Court on 11/09/2024.

Sd/-

**(Shamim Yahya)**  
**Accountant Member**

**Dated: 11/09/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Laliet Kumar)**  
**Judicial Member**

**ASSISTANT REGISTRAR**