



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.190/LKW/2024
Assessment Year: 2017-18

Shailesh Kumar Gupta 584KA/66, Behind Masjid Jail Road, Bangla Bazar Lucknow	v.	CIT(A) Lucknow
TAN/PAN:ALVPG5898C		
(Appellant)		(Respondent)

Appellant by:	Shri A. K. Dubey, C.A.		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	28	08	2024
Date of pronouncement:	30	08	2024

ORDER

This appeal has been preferred by the assessee against the order dated 09.02.2024, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2017-18.

2. The brief facts of the case are that the assessee, Proprietor of M/s Seema Traders is engaged in the business of trading of scraps and detergents. He filed his return of income on 28.10.2017, declaring a total income of Rs.3,75,450/-. The case of the assessee was selected for Limited Scrutiny through CASS. The Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act'), assessing the total income of the assessee at Rs.18,12,950/- by making addition of Rs.14,37,500/- under section 68 of the Income Tax Act, 1961 (hereinafter called 'the Act').

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed.

4. Now, the assessee has approached this Tribunal challenging the dismissal of his appeal by the NFAC by raising the following grounds of appeal:

1. *The CIT(A) NFAC has erred in law and in facts in confirming the assessment order passed by the Assessing officer and making addition of Rs.14,37,500 u/s 68 of I T Act relying on the cash book maintained in Tally, being a clerical mistake of Data entry operator that cash collection made on 08th Nov 2016 vide cash receipt dated 98th Nov was erroneously entered in tally cash book on 09th Nov 2016. The CIT(A) NFAC has ignored the actual facts and evidences placed on record e.g actual collection date, receipt book, confirmation from parties, availability of stock etc.*
2. *The CIT (A) has erred in confirming the order of addition and refusing the confirmation of parties as submitted on ground that it does not have PAN No. and seal of the respective parties on confirmation letter whereas no show cause was issued by CIT (A) to the appellant offering an opportunity to submit the confirmation of parties in corrected format with PAN as required. The CIT (A) has erred in law or on facts in not allowing sufficient opportunity to appellant before disposing of the appeal.*
3. *The CIT (A) has erred in law and facts, without considering the actual nature of business of appellant, which transactions mostly comprises of cash, even more than 90% of total sales is made by way of cash, and targeted segment of market is small middle level, street and other low income shopkeepers and end consumers. And throughout the year including demonetization period, the banking pattern of appellant has been very consistent and normal as compared to preceding years and has not shown any exceptional uptrend Depositing of Rs 10 lacs*

or such similar amount at one bank visit is very regular and routine feature of appellant's cash based business. This deposit can not be said to be extraordinary and exceptional keeping the previous cash deposit track record of appellant.

4. *The CIT (A) NFAC has erred in law and facts in confirming the order of AO and substantially ignoring the nature of business of appellant where most of sales are made at doorstep of the customers and cash collection is made at end of day by himself and through collection agents. Who usually submit the cash on next day. Which is entered in tally by a outsourced staff as and when he receives the cash receipt vouchers, and it was clerical mistake on part data entry operator that collection of 08th Nov was recorded in Tally on 09th Nov 2016. This error was not identified since it was not a financial year cut off date which may affect the true and fair view of financial statements as whole for the year If these cash receipts are correctly recorded in Tally on its actual date i.e then cash in hand as on 08th Nov 2016 would be 25,78,363/-*
5. *The CIT (A) NFAC has erred in confirming the order of AO and making the addition under income from other sources, as appellant is engaged in trading of soaps and detergents and having no other income since last many years so the AO is not permitted to treat this income from other sources and levy the tax u/s 115BBE of the Act as he has sole source of income.*

5. The Id. AR submitted that the Id. CIT(A), NFAC has not afforded sufficient opportunity to the assessee to submit the confirmation of parties in correct format with PAN, as required. He prayed that in the interest of justice, the assessee's appeal may be restored to the file of the Assessing Officer (AO), so that assessee can submit the confirmation of parties in the prescribed format.

6. The ld. Senior D.R. had no objection to the restoration of appeal to the AO.

7. I have heard both the parties and have also perused the material on record. It is evident that there was complete non-compliance on the part of the assessee during the course of first appellate proceedings. However, looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the AO with the direction to provide one more opportunity to the assessee to present his case. I also caution the assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

8. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 30/08/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:30/08/2024

JJ:

Copy forwarded to:

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

By order
Assistant Registrar