

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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.1792/Del/2024
[Assessment Year: 2017-18]**

Orion Automobiles Private Limited, B-31-32, IDC MEH, Road, Gurgaon, Haryana-122001	Vs	ACIT, Circle-3(1), HSIIDC Building, Vanijya Nikunj, Udhyog Vihar, Phase-V, Gurgaon, Haryana-122001
PAN-AAACO1386N		
Assessee		Revenue

Assessee by	Sh. Shivam Yadav, Adv. & Sh. Sumit Lalchandani, Adv.
Revenue by	Sh. Koushlender Tiwari, CIT-DR

Date of Hearing	14.08.2024
Date of Pronouncement	14.08.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 19.02.2024 pertaining to Assessment Year 2017-18.

2. The grounds of appeal raised by the assessee reads as under:-

1. *That the assessment order passed by the AO under Section 144 of the Act dated 17.12.2019 and also the additions made along with the impugned order dated 9.02.2024 passed by the National Faceless Appeal Centre ('NFAC*') are illegal, bad in law. without jurisdiction. barred by time limitation and void ab initio.*
2. *That in view of the facts and circumstances of the case, the AO has erred in making additions to the extent of Rs.19,93,62,390/- as against the ROI filed by the Assessee.*
3. *That in view of the facts and circumstances of the case and law. the AO/NFAC has erred in not granting the Assessee with*

sufficient and reasonable opportunity of hearing and for placing on record relevant documents and evidences.

4. *Without prejudice, on the facts and circumstances of the case and in law, the Assessee was also prevented by reasonable and sufficient cause for not producing relevant documents/evidences/material and details before the AO/NFAC.*
5. *On the facts and circumstances of the case and in law, the addition of Rs. 16,83,15,886/- made by the Assessing Officer on account of alleged cash deposits in the bank accounts of the Assessee is erroneous, illegal, bad in law and liable to be deleted.*
6. *That in view of the facts and circumstances of the case and law, the AO has erred in not appreciating that the alleged income has already been shown in the Profit & Loss Account by way of sale and same has duly been declared in the return(s) of income. It is wrongly treated as income.*
7. *That in view of the facts and circumstances of the case and law. the AO has erred in taking recourse to Section 69A of the Act without appreciating that none of the ingredients necessary for invocation of the said provision were satisfied. The nature and source of the cash deposits being proceeds arising out of cash sales is patently evident from the entries in the books of account of the Assessee.*
8. *Without prejudice. the Assessing Officer has erred in not appreciating that it was only an amount of Rs.9,15,91,834/- which was deposited in the Assessee bank account as against the alleged amount of Rs. Rs. 16,83,15,886/- made by the Assessing Officer:*
9. *On the facts and circumstances of the case and in law. the Assessing Officer has erred in not appreciating that for the year under consideration total sales from the showroom/workshop was Rs.312,82,55,800/- and as such cash deposits amounting to Rs.9,15,91,834/- was made in various bank accounts was on account of such sales.*
10. *On the facts and circumstances of the case and in law, the AO has erred in making additions without any evidence on record which solely based on conjectures and surmises.*
11. *On the facts and circumstances of the case and in law, the AO had erred in making disallowance of Rs.85,17,349/- under section 36(1)(iii) of the Act which is based on the assumption of wrong facts.*
12. *On the facts and circumstances of the case and in law. the AO had erred in not considering and appreciating the financial statements of the Assessee for the year under consideration i.e., AY 2017-18 and NFAC had erred in upholding the same without*

considering the same. Hence, the disallowance/ addition is illegal and bad in law.

13. *On the facts and circumstances of the case and in law. the AO/NFAC had erred in not considering the fact that the loss claimed by the Assessee on loss due to fire of Rs.12,37,815/- was genuine. Hence, the addition made is patently illegal and bad in law.*
14. *That in view of the facts and circumstances of the case and law. the AO has erred in applying the provision of Section 115BBE of the Act. Invocation of the said provision is illegal and bad in law.*
15. *That the observations and addition/disallowance made are unjust, illegal. arbitrary. bad in law, highly excessive and based on surmise and conjecture.*
16. *On the facts and circumstances of the case and in law, the AO had erred in charging interest under sections 234B and 234C of the Act which has been wrongly worked out and wrongly charged.*
17. *On the facts and circumstances of the case and in law, the AO had erred in the initiation of penalty proceedings under section 270A of the Act.*
18. *On the facts and circumstances of the case and in law. the AO had erred in the initiation of penalty proceedings under section 272(1)(d) of the Act.*

3. Brief facts of the case:- The assessee company is a Hyundai Car dealer. The assessee e-filed its return of income for the AY 2017-18 on 31-10-2017 declaring the total income at Rs.2,12,91,340/-. The assessee's case was selected for scrutiny and notice u/s. 143(2) of the Act was issued on 24.09.2018. It was noticed that the AO had completed the assessment ex-parte u/s 144 of the Act on 17.12.2019 determining the total income of the assessee at Rs. 19,93,62,390/-. The AO made following additions/disallowances:-

Sl. No.	Particulars	Addition (in Rs.)
1	Addition u/s 69A of the Act on account of unexplained to following cash deposits	16,83,15,886/-
2	Addition u/s 36(1)(iii) of the Act	85,17,349/-
3	Disallowing loss	12,37,815/-

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee *ex-parte* as there was no compliance by the assessee.

5. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. At the outset, the ld. AR submitted that the AO/NFAC did not grant the assessee with sufficient and reasonable opportunity of hearing and for placing on record, relevant documents and evidences. It was urged by the Ld. AR that the order of the Ld. CIT(A) may be set-aside to the file of the AO for submitting the necessary documents and evidences to support its claim against the above disallowances made in the assessment order.

7. The ld. DR relied upon the orders of the authorities below.

8. We have heard both the parties and perused the material available on record. It is seen from the assessment order as well as the order of the Ld. CIT(A) that the matter was decided *ex-parte* as the assessee did not appear in either of the proceedings. In ground no.6 & 7 by the assessee submits that the AO has erred in not appreciating that the alleged income has already been shown in profit & loss account by way of sale and the same has been duly declared in the return of income and that the cash deposits in the bank account represents proceeds arising out of cash sales and the same is evident from the entries in the books of accounts of the assessee. Further, in ground no.8, it has been submitted that the Assessing Officer has erred in not appreciating that it was only an amount of Rs.9,15,91,834/- which was deposited in the Assessee bank account as against the alleged amount of Rs. Rs.16,83,15,886/- made by

the Assessing Officer. Further, in ground no.9, it has been submitted that the Assessing Officer has erred in not appreciating that for the year under consideration total sales from the showroom/workshop was Rs.312,82,55,800/- and as such cash deposits amounting to Rs.9,15,91,834/- was made in various bank accounts was on account of such sales. As noted above that the assessee is a car dealer of Hyundai Motors and the above aspects needs factual verification. Considering these facts and in order to subserve the interests of justice, the order of learned CIT(A) is set aside and the matter is restored to the file of AO for framing of assessment de-novo after providing reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 14th August, 2024.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 14.08.2024.

[Signature]

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,