

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA No. 1037/DEL/2024
[Assessment Year: 2017-18]**

R.S.M. Finserv Limited, P-34, Tara Apartments, Alaknanda, Kalkaji, New Delhi-110019.	<u>Vs</u>	Income-tax Officer, Ward 20(4), New Delhi.
PAN: AABCR 0049 L		
APPELLANT		RESPONDENT
Assessee by:		Shri Ankit, Adv. & Ms. Lovely, adv.
Department by:		Ms. Anupama Singla, Sr. DR
Date of hearing		14.10.2024
Date of pronouncement		14.10.2024

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 22.01.2024, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

"1. That under the facts and circumstances of the case, the impugned order dated 22.01.2024 passed u/s 250 of the Income Tax Act, 1961

(hereinafter referred to as "the Act"), generated vide Order No: ITBA/NFAC/S/250/2023- 24/1059995726(1), dismissing the grounds of appeal and sustaining the assessed income at Rs. 4,45,69,500/- in place of returned income as returned by the assessee is bad in law on account of several grounds and assessee/appellant denies its liability to be assessed for any income other than the income already returned by the assessee and the consequential demand of Rs. 4,73,71,991/-. The additions upheld are liable to be deleted in the facts and circumstances of the case.

2. That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact while passing the impugned order as the Ld. CIT(A), has dismissed the grounds of the appeal on account of absence of appellant despite several opportunities provided to the latter, but it is imperative to note that the absence of the appellant was not deliberate or intentional but due to the unavailability because of sufficient cause of the appellant during the course of appeal proceedings.

3. That under the facts and circumstances of the case, Ld. CIT(A) of NFAC while sustaining the addition of Rs. 4,45,69,500/-, has failed to appreciate that addition otherwise is not sustainable as the same has been added by the AO on account of cash deposits made during the demonetization period, but the Ld. AO have failed to appreciate that the cash deposited during the period was out of the cash sales made by the assessee during the AY under consideration and also out of the cash in hand available from the previous sales.

4. That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact while sustaining the assessment order, as the Ld. CIT(A) has upheld the addition made by the Ld. AO in the assessment order dt. 12.12.2019 passed without following the due provisions of law and without having proper jurisdiction.

5. That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact while sustaining the assessment order, as the Ld. CIT(A) has upheld the addition made by the Ld. AO based on conjectures, surmises and mere presumptions.

6. That under the facts and circumstances of the case learned AO has erred in law as much as in facts in initiating penalty proceedings u/s

271AAC and 272A(1)(d) of the Act, the issuance of penalty notice may be held invalid.

7. That appellant craves to leave, alter, amend or modify the grounds of appeal before or during the hearing of the appeal.

8. That each ground is independent and without prejudice to each other.”

2. Facts giving rise to the present appeal, in brief, are that for A.Y. 2017-18 the assessee filed its return of income on 29.03.2018 declaring loss of Rs. 14,91,289/-. The case was selected for complete scrutiny under CASS. The assessee did not respond to the statutory notices issued u/s 143(2) and 142(1) of the Income Tax Act 1961 (hereinafter referred to as the 'Act') Subsequently, notices along with questionnaire were issued. During scrutiny assessment the AO observed that during the year under consideration, the assessee company declared loss of Rs 14,91,289/- under the head profit and gains from business or profession on total turnover of Rs 3,90,81,250/- from sale of products/goods, Rs 96,94,328/- from sale of services and Rs. 24 033/- from interest. The AO also observed that during demonetization period the assessee had cash deposits of Rs. 4,45,69,500/- in its bank account. The AO by issuing notice u/s 142(1) of the Act required the assessee to furnish details regarding cash deposits. However, assessee did not response to the notices issued by the assessee. In response to show cause notice for completion of assessment proceedings u/s 144 of the Act part compliance was made by the

assessee. The AO completed the assessment u/s 144 of the Act at Rs. 4,45,69,500/- by adding Rs. 4,45,69,500/- u/s 68 on account of unexplained cash deposits ; and Rs. 4,448/- being interest on income tax refund, treating the same as undisclosed income of the assessee. Aggrieved against it the assessee preferred appeal before the learned CIT(A) who vide impugned order dated 22.01.2024 dismissed the appeal by affirming the assessment order. Aggrieved against it the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal learned counsel for the assessee submitted that during assessment proceedings the AO made the addition on account of cash deposits made during demonetization period with appreciating the fact that the cash deposit was made out of cash sales made by the assessee during the assessment year under consideration and also out of cash in hand available from previous sales. He submitted that assessee had filed appeal before learned CIT(A) on bona fide grounds challenging the addition made by the AO. However, the learned CIT(A) confirmed the addition without going into the merits of the case. He prayed that order of learned First Appellate Authority confirming the addition made by the AO may be set aside and matter may be restored to his file for fresh adjudication on merit after affording adequate opportunity to the assessee of being heard.

4. On the other hand learned DR supported the order of learned First Appellate Authority.

5. We have heard rival submissions and perused the material available on record. The learned CIT(Appeals) has dismissed assessee's appeal, inter alia, by observing as under:

“6.8 By its own act, the appellant has failed to remain vigilant and did not avail the opportunity to submit its point of view/contention, as it did not respond to various notices issued. The fact that the appellant did receive the order and filed the present appeal, but chose not to respond to any notices issued by this office clearly establish total disregard to the due process of law. Therefore, the conclusion that the appellant could not controvert the findings given by the AO on merits of the issue either is inescapable.

6.9 In view of the above, I am of the considered view that the Assessing Officer was justified in making addition of Rs. 4,45,69,500/- as unexplained cash credit in his order passed u/s 143(3) of the Act, and accordingly, the grounds of appeal no. 1, 2, 3 and 4 are "Dismissed".

7 In the result, the appeal is "dismissed".

5.1 Considering the fact that the learned First Appellate Authority has sustained the addition in question without going into the merits of the case, therefore, to subserve the interests of natural justice and to provide an opportunity to the assessee to represent its case properly, I hereby set aside the order of learned CIT(Appeals) and restore the matter back to his file to decide the appeal on merit after affording

adequate opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 14.10.2024.

**Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**