

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

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

ITA No. 1156/DEL/2024 [A.Y 2017-18]

Pinky Tyagi
T-4/1605, RPS Sabana,
Sector-88, Faridabad, Haryana
PAN: BRIPP1680D

Vs.

The Income-tax Officer
ITO Ward-35(8)
New Delhi

(Applicant)

(Respondent)

Assessee By : Shri Vishal Chandra Gupta, CA
Shri Naresh Kumar , Adv.

Department By : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 10.10.2024

Date of Pronouncement : 17.10.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the NFAC, Delhi dated 18.01.2024 pertaining to A.Y 2017-18.

2. The grievances of the assessee read as under:

1. That Hon'ble CITA has erred on facts of the case and in law while affirming the assessment order of Ld. A.O. passed u/s 144 of the Act and consequent demand of tax which is liable to be set aside.

2. That Hon'ble CITA has erred in not keeping the facts and evidences of the Appellant in consideration while concurring the findings of Ld. A.O. on the ground that the Appellant has not furnished any evidence before the Ld. A.O.

3. That having regard to the facts and circumstances of the case, Hon'ble CITA has erred while ignoring the facts and evidences of the Appellant on the assertion of ample opportunity granted by Ld. A.O. during assessment proceeding and disregarding of the fact that there was reasonable cause for alleged non-compliance and passing the order u/s250 of the Act.

4. That having regard to the facts and circumstance of the case, the Ld. A.O. is wholly incorrect and in disregard of the fact that the cash deposited was remitted to the bank account of M/s Forbes Technosys Limited of which distributorship was in the name of Swastik Enterprises.

5. That the Ld. A.O. has grossly erred while imposing the penalty amounting to Rs. 40,000 and Rs. 6,28,065 u/s 272A(1)(d) and u/s 271AAC(1) of the Act respectively while pendency of the appeal against the assessment order before the Hon'ble CITA.

6. That the Appellant prays to grant stay against the demand of unjustified tax raised or the penalty imposed by the Ld. A.O.

7. That the Appellant prays to allow the appeal in the interest of justice and the impugned order passed by the Ld. A.O. by making an addition of Rs.1,04,67,750/- to returned income of Rs. 3,00,920/- may kindly be annuled and returned income of Rs. Rs.3,00,920/-may kindly be accepted.

8. That the Appellant craves to leave to add, alter, amend, modify, substitute, delete any of the ground(s) of appeal at or before the time of the final hearing of the appeal, if necessary.

9. That the aforesaid grounds of appeal are without prejudice to each other.

3. Briefly the facts of the case are that the assessee is an individual lady and a house maker and had e-filed her return of income for the FY

2016-17 declaring total income of Rs. 3,00,920/- on 26.03.2018. Later the case was selected for scrutiny through CASS for examination of the issue "Cash deposited during the year" and accordingly the notice u/s 143(2) of the Income tax Act, 1961 (Herein after referred to as "Act") was issued on 20.09.2018.

4. The Ld. A.O. has, during the assessment proceedings, called for the information from State Bank of India u/s 133(6) of the Act. On the basis of bank's information regarding deposit in her bank account of Rs 1,04,67,750/- and in absence of any justification from the assessee, the AO concluded the assessment ex-parte u/s 144 of the Act by making an addition of Rs 1,04,67,750/- u/s 69A r.w.s. 115BBE of the I T Act.

5. The appeal before the CIT(A) was negatived and hence the aggrieved assessee is before us.

6. The ld AR of the assessee argued that the husband of the assessee Shri Sandeep Tyagi was an employee of a company named M/s Forbes Technosys Limited (herein after referred to as "FTL"). It was submitted that the father-in-law of the assessee Shri Mange Ram authorized the assessee to carry his business under the name and style "Swastik Enterprises". It was submitted that the modus-operandi of the business of Swastik Enterprise was to collect cash from the

franchises/small vendors/mobile and communication shops and get it deposited into bank account of assessee being Distributor. The assessee transferred this money to the bank account of FTL who in turn transferred the balance into the wallets of franchises / small vendors. It was argued that the margin in this business was only @ 0.4%.

7. It was submitted that while considering total amount of cash deposited into bank account, the Ld. A.O. has ignored the corresponding transfer of the amounts to FTL which were duly reflecting in the Bank statement. It was also submitted that due to the illness of the spouse and the negligence of the consultant of the assessee, the case was not properly presented before the AO who passed the assessment order under section 144 of the Act on December 25, 2019. It was stated that notices were being delivered to email id jaspalbhandari1976@gmail.com which belonged to the consultant who registered the assessee on the Income Tax portal while filing the return of income electronically. It was submitted that the consultant has again not acted diligently during appeal proceedings before the Commissioner of Income Tax (Appeals) and prayed for remanding back the matter to the file of Ld. A.O.

8. Per contra, the ld. DR did not raise any serious objection and relied upon the orders of the authorities below.

9. We have heard the rival submissions and have perused the relevant material on record. Having considered the rival submissions, we are of the considered opinion that the reasons for non-appearance before the AO and the CIT(A) has substantial weight and that in the interest of justice and fair play, the issue should be restored to the file of the AO for fresh adjudication. The assessee is directed to furnish the original documents as well as material evidence for verification and the AO is directed to examine the same and decide the issue as per the provisions of law after affording reasonable and sufficient opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee in ITA No. 1156/DEL/2024 is allowed for statistical purposes.

The order is pronounced in the open court on 17.10.2024.

Sd/-

Sd/-

[KUL BHARAT]
JUDICIAL MEMBER

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 17th OCTOBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	