

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

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.295/Del/2024
[Assessment Year: 2017-18]**

Shree Shyam Traders, B/2/801, Tulip Ace, Sector-89, Pataudi Road, Haryana-122004 PAN-ABTFS3678J	Vs	Income Tax Officer, Ward-4(2), Gurugaon, Haryana-122001
Assessee		Revenue

Assessee by	Sh. Arvind Kumar, CA
Revenue by	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	17.10.2024
Date of Pronouncement	17.10.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 05.12.2023 of the National Faceless Appeal Centre (in short 'NFAC'), Delhi, relating to Assessment Year 2017-18.

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

1. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant and thus violating the principles of natural justice.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Authority in making addition of Rs. 13,68,000/- under section 68 of the Income Tax Act being the capital introduction by the assessee and that too by recording incorrect facts and findings, more so when all documentary evidences in support of the claim are already part of the records.

3. That on the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Ld. Assessing Officer in invoking provision of section 115BBE of the Income Tax Act, 1961 on the addition made of Rs. 13,68,000/- without considering the facts and circumstances of the case.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 143(3) without assuming jurisdiction as per law and without complying with the other mandatory conditions as envisaged under the Act.

5. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned assessment order us 143(3), is bad in law and against the facts and circumstances of the case.

6. That in any case and in any view of the matter, action of Ld CIT(A) in confirming the action of Ld. AO in passing the impugned assessment order dated 30.12.2019 and impugned addition made therein is illegal, bad in law, void ab-initio and against the facts and circumstances of the case and in gross violation of principles of natural justice and barred by limitation also.

3. Brief facts of the case:- The assessee had filed its return of income on 31.10.2017 declaring the total income of Rs.3,72,420/-. The case was selected for scrutiny and an addition of Rs.13,68,000/- was made u/s 68 of the Act. The relevant extract of the order of the AO is reproduced as under:-

4. Introduction of Capital

On Perusal of reply filed by the assessee, it is noticed that there is increase in capital of firm amounting to Rs. 47,60,613/- The assessee was asked to explain the source of increase in capital, but the assessee failed to file reply alongwith supporting documents amounting to capital increase of Rs. 13,68,000/-. The assessee was afforded ample opportunities to explain the source of increase in capital during the year and to furnish supporting evidences for the same but failed to submit the evidences.

4.2. Keeping in view the statutory provisions, legal principles, and factual matrix that the assessee has not

able to produced any corroborative evidence and documentary evidence regarding the introduction of capital amounting to Rs. 13,68,000/- and remained unverified. The onus of proving the source of introduction is on assessee. Keeping in view the above findings and the fact that the assessee was engaged in business activities and the addition of BBE of the Act at the rate of 60%.”

4. Aggrieved with the said order, the assessee appealed before the Ld. CIT(A), where, there was no compliance despite six opportunities given as per the details on page-3 of the appellate order. The Ld. CIT(A) held that it was evident that the assessee during the assessment as well as in the appellate proceedings fail to furnished documentary evidences/proper explanation in support of his contention. He, therefore, dismissed the appeal of the assessee and confirmed the addition of Rs.13,68,000/- u/s 68 of the Act.

5. Against the said order, the assessee is in appeal before us

6. During the course of hearing, the ld. AR submitted a copy of decision dated 16.02.2023 in the case of Vijay Garg vs State of Haryana & Others (CRM-M-14003-2022) of the Hon'ble Punjab & Haryana High Court at Chandigarh granting bail to Shri Vijay Garg. On perusal of this order it is seen that Shri Vijay Garg managed three firms, two in the name of Shri Shyam Traders and one in the name of M/s Stasya Enterprises. A case was filed by state of Haryana that through these firms, the petitioner availed input tax credit by fabricating invoices resulting in generation of bills worth Rs.367 Crores and evasion from payment of goods and services tax (for short GST) to the tune Rs.26 Crores. The Ld. AR submitted that the petitioner was in custody since 21.09.2021 and as per

the above decision was released on 16.02.2023 and therefore, due to these difficulties, he could not appear before the ld. CIT(A). In view of these facts, the ld. Counsel for the assessee prayed that the order of the Ld. CIT(A) may be set-aside to the file of the ld. CIT(A) for fresh adjudication and one more opportunity may be granted to the assessee to represent its case effectively.

7. The ld. DR strongly supported the orders of the authorities below.

8. We have heard both the parties and perused the materials available on record. Considering the entire facts in perspective in order to subserve the interests of natural justice and to provide an opportunity to the assessee to effectively represent his case, the order of the Ld. CIT(A) is set-aside to the file of the ld. CIT(A) for fresh adjudication 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 only.

Order pronounced in the open court on 17th October, 2024.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated 17.10.2024.

Shekhar

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,