

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.4785/Mum/2023  
Assessment Year: 2017-18**

Shridatt Sahakari Patsanstha Maryadit  7, 167 Anaji Master Building, Khedgalli Sayani Road, Prabhadevi, Prabhadevi S.O. Mumbai - 400025.  <b>PAN: AAFAS 0371 N</b>	Vs.	Income Tax Officer, Ward-22(3)(4), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Satyaprakash Singh  
Revenue by : Dr. Kishor Dhule, CIT, DR

Date of Hearing : 05.08.2024  
Date of Pronouncement : 21.10.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 11.12.2023 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*1. The order dated 11/12/2023 bearing No. ITBA/NFAC/S/250/2023-24/1058629635[1] Passed under section 250 of Income Tax Act. 1961 by the Hon'ble CIT[Appeal], National Faceless Appeal Centre [NFAC], Delhi, is unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*

**2 CONDONATION OF DELAY:-**

*On the facts and in circumstance of the case and in law, the Hon'ble CITJA] has erred in not condoning the delay in filing the appeal even*

*though the sufficient reason for the said delay was furnished by the Appellant along with the sworn affidavit of the employee.*

3 NON-ADMISSION OF ADDITIONAL EVIDENCE:-

*On the facts and in circumstance of the case and in law, the Hon'ble CIT[A] has erred in not admitting the additional evidence on the ground that the Appellant has not furnished any application under rule 46A with the submission.*

*3.2 The Hon'ble CIT[Appeal] failed to consider that the appeal had vide submission dated 20.10.2021 had submitted an application under rule 46A of the Income Tax Rule 1962 which was not considered/ overlooked by him.*

4 NON COMPLAINE OF V.C NOTICE:-

*On the facts and in circumstance of the case and in law, the Hon'ble CITA] has erred in observing that the Appellant has not responded for the V.C whereas Appellant has requested vide response filed on 31.10.2023 for considering the submission along with the application under rule 46A of the Income Tax Rule 1962.*

*5. On the facts and in circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition of Rs. 1,49,74,790/- being cash deposit during demonetization period ignoring the fact that the same was received from members of the appeal and appellant was entitled to deduction under section 80P of the Income Tax Act, 1961.*

*6. The appellant craves leave to add, amend or alter the above grounds as may be deemed.”*

2. Fact in brief is that assessing officer has referred Actionable Information Monitoring System (AIMS) of ITBA system that assessee had made cash deposit during the demonetization period i.e. 09.11.2016 to 31.12.2016 but the assessee has not filed Return of Income for the A.Y. 2017-18. Therefore, a notice u/s 142(1) of the Act was issued requiring the assessee to furnish the return of income. However, the assessee had failed to make any

compliance to the notice issued u/s 142(1) of the Act. Therefore, the assessing officer has made ex-parte assessment u/s 144 of the Act and added the cash deposit amounting to Rs. 90,32,210/- and other credit entries of Rs. 59,42,580/- totaling to Rs. 1,49,74,790/- appearing in the bank account of the assessee to the total income of the assessee u/s 69A of the Act.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that assessee has not made any compliance to the notices issued by the assessing officer u/s 142(1) of the Act and assessee has also not submitting any petition in support of additional evidences filed under Rule 46A of the I.T. Rules, 1962. During the course of appellate proceedings before us, the ld. Counsel submitted that it was apprised to the ld. CIT(A) that notices issued by the assessing officer were received by the office's' unauthorized person i.e. peon of the assessee and same was not communicated to the assessee therefore no compliance could be made before the assessing officer during the assessment proceedings.

4. On the other hand, ld. DR supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Assessment in the case of the assessee was finalized ex-parte u/s 144 of the Act as the assessee had not made any compliance to the notices issued u/s 142(1) by the assessing officer, therefore, during the course of appellate proceedings before the ld. CIT(A),

the assessee had filed the relevant details along with copies of documents which could not be filed before the AO. The ld. CIT(A) has dismissed the appeal of the assessee holding that assessee had neither made any compliance to the notices issued by the assessing officer and also nor filed the petition in support of additional evidences filed by the assessee. In this regard, we have perused the written submission filed before the Ld. Commissioner of Income Tax Appeal as placed in the paper book wherein assessee had filed application under Rule 46A of the I.T. Rules before the ld. CIT(A) submitting that due to non-communication of the notices issued by the assessing officer the assessee could not file the details and documents during the course of assessment proceedings. Therefore, the assessee has requested the ld. CIT(A) to admit the same as additional evidences for adjudicating the appeal on merit since the assessee was prevented by sufficient cause for producing those documents before the assessing officer. However, we find that the First Appellate Authority has dismissed the appeal of the assessee without controverting reasons and circumstances cited in the application filed by the assessee under Rule 46A as discussed supra in this order. In the light of the above facts and circumstances, we restore this case to the file of the ld. CIT(A) for adjudicating on merit as contemplate u/s 250(6) of the Act after taking into consideration the additional evidences filed by the assessee. Needless to say that adequate opportunity be provided to the assessee. The assessee is also directed to make due compliance before the ld. CIT(A) without any failure. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 21.10.2024.

**Sd/-**  
**(MS. KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 21.10.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai