

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No.4268/Mum/2024
(Assessment Year: 2017-18)**

Unlimited Nutrition Pvt. Ltd., 52, 4 th Floor, Nawab Building, DN Road, Fort, Mumbai-400001. PAN : AABCU6161G	Vs.	DCIT, Circle-1(3)(2), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)		
: Respondent)		

Appellant / Assessee by : Ms. Kinjal Buta, AR

Revenue / Respondent by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 09.10.2024

Date of Pronouncement : 05.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 24.06.2024 for Assessment Year (AY) 2017-18. The assessee raised the following grounds of appeal:

“1. The Learned DCIT erred in not granting the Appellant sufficient opportunity of being heard before passing the order under Section 143(3) of the Act and accordingly, the same is bad in law.

The Appellant prays that the order passed by the Learned DCIT be cancelled as there is gross violation of principles of natural justice. In addition to above learned CIT(A) did not provide us with enough opportunity to make submissions about the genuineness of these transactions and passed the impugned order in this behalf, which is considered as unjust in the eyes of the law.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in disallowing the Business Promotion and Sales Promotion expenses of Rs. 28,31,028/- even though said expenses were incurred for purpose of business and details and explanation to that extent were submitted during assessment proceedings.

3. On the facts and in the circumstances of the case and in law, the learned DCIT erred in disallowing the cash sales as unexplained cash deposits under section 68 of the Income Tax Act, 1961 amounting to Rs. 54,49,500/- even when various details and explanation regarding the cash deposits were submitted during the assessment proceedings.

4. On the facts and in the circumstances of the case, the learned DCIT erred in levying interest u/s 234A, 234B and 234C,

5. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.”

2. The assessee is a company engaged in the business of protein supplements. The assessee filed the return of income for AY 2017-18 on 30.10.2017 declaring a total income of Rs. 44,73,140/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment by making disallowance towards business promotion and sales promotion expenses and disallowance of unexplained cash deposits under section 68 of the Income Tax Act, 1961 (the Act). The reason as stated in the order of the AO for making the above disallowance is that the assessee has not furnished

documentary evidences to substantiate the claim of business promotion and sales promotion expenses and that no proper explanation about the nature and source of cash deposit was submitted. Aggrieved the assessee preferred appeal before the CIT(A). The CIT(A) dismissed the appeal confirming the disallowance made by the AO.

3. The Id. AR submitted that the CIT(A) before dismissing the case had sent only one notice and that the CIT(A) has not examined the issues on merits. The Id. AR further submitted that before the CIT(A) the assessee has raised the contention that the AO has not examined the various documentary evidences submitted before the AO and that the AO was not correct in making the disallowances without proper appreciation of the details submitted before him. Therefore, the Id. AR argued that there is violation of natural justice and that the assessee was not given a proper opportunity of being heard by the lower authorities.

4. The Id. DR relied on the order of the lower authorities.

5. We heard the parties and perused the material on record. The AO has made the disallowance of business promotion expenses for the reason that the assessee has not filed any documentary evidences in support of the claim of the expenses. On perusal of records we notice that the assessee through ITBA portal submissions dated 17.12.2019 and 19.12.2019 has submitted various documents such as cash ledger, bills in support of the business promotion expenses etc. before the AO. We further notice that the AO though has considered the submission dated 17.12.2019 has examined only the written submissions of the assessee and not the various other documentary evidences submitted by the assessee before the AO. Further, we notice that, the assessee submitted before the AO with regard to the cash deposits that it is out of the cash sales made by the assessee and in support of the same the

assessee has submitted the VAT returns and CST returns along with cash book before the AO. The AO while making addition under section 68 has held that the nature and source are not been properly explained by the assessee. On perusal of the order of the CIT(A) we notice that the CIT(A) has not given any finding on the merits of the issue or on the documentary evidences on record. The CIT(A) has simply upheld the order of the AO for the same reason that the assessee has not discharged the onus of substantiating the claims by documentary evidence. Considering the facts and circumstances unique to the present case, we see merit in the submission of the Id. AR that the lower authority has not properly examined the evidences submitted before them and that no proper opportunity of being heard was given. Therefore, in the interest of natural justice and fair play, we deem it fit to remit the case back to the AO with a direction to properly examined the documentary evidences submitted by the assessee with regard to the disallowances and call for any further details as may be required for the purpose of deciding the case in accordance with law. Needless to say that the assessee be given proper opportunity of being heard. It is ordered accordingly.

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

Order pronounced in the open court on 05-11-2024.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai