

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2889/Del/2024  
(Assessment Year: 2018-19)**

Surender Gupta, Shop No. 12, The Diamond Mall, Ground Floor, Gurudwara Road, Karol Bagh, Delhi (Appellant) <b>PAN:AAYPG1109N</b>	Vs. Income Tax Officer, Ward-2(1), Delhi  (Respondent)
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Assessee by :	Shri Pranshu Singhal, CA
Revenue by:	Shri Mritunjay Prasad Dwivedi, Sr. DR

Date of Hearing	23/10/2024
Date of pronouncement	14/11/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.2889/Del/2024 for AY 2018-19, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi dated 10.08.2023 against the order of assessment passed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The assessee has raised the following grounds of appeal before us:-

*"1. On the facts and circumstances of the case, the order passed by the Ld. CIT(A) u/s 144 of the Act is bad both in the eyes of law as well as on the facts of the case.*

*2. (i) On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in passing the order without giving assessee an opportunity of being heard in violation of the principle of natural justice. (ii) That the non- appearance before the Ld. CIT(A) was due to reasons beyond the control of the assessee.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the income at Rs. 64,18,540/- as against the returned income of Rs. 18,29,200/-.*

4. (i) *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the rejection of books of accounts of the appellant. (ii) That the books of accounts of the appellant have been rejected without requiring the appellant to produce the books of accounts during the course of assessment.*

5. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in confirming the addition made by the AO of Rs. 43,88,287/- by adopting an arbitrary gross profit rate of 2.65% on the sales turnover to ascertain the gross income of business.*

6. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of Rs. 2,01,049/- on account of adhoc disallowance of 20% of the expenses claimed under the head (Electricity expenses, Shop rent, Salary to Staff, Depreciation) arbitrarily.*

7. *That the appellant craves leave to add, alter or amend any of the grounds of appeal."*

3. We have heard the rival submissions and perused the materials available on record. We find that though the assessee has raised several grounds of appeal, the preliminary ground raised is that adequate opportunity of being heard had not been granted to the assessee by the authorities. We find that the assessee had placed on record a sworn affidavit dated 22.10.2024 before us which reads as under:-

"

*AFFIDAVIT*

*I, Surender Gupta, age 54 years, s/o Sh. Late Mohan Lal Gupta R/o S-469A, First Floor, GK-1, New Delhi-110048, hereby solemnly affirm as under:*

1. *That I am an individual and is being assessed to income tax vide PAN AAYPG1109N.*

2. *That an assessment order was passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 on 21.04.2021 by making an addition of Rs. 45,89,336/-.*

3. *That aggrieved from the said order, I filed an appeal before the Income Tax (Appeals) on 23.08.2021.*

4. That order dated 24.04.2024 was passed under section 250 of the Income 1961 by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), confirming the addition made by the Assessing Officer due to non- submissions.

5. That I acquired a liquor license in the year 2005 and thereafter entrusted the operation of the liquor business to Mr. Mahavir Mittal, my brother-in-law, who has been authorized to manage the firm.

6. That although the legal title of the liquor shop is in my name, the entire business operations belong to Mr. Mahavir Mittal, who also handles the associated bank accounts.

7. That in 2012, I requested Mr. Mahavir Mittal to return possession of the liquor shop to me, which he refused to do

8. That subsequently, I instructed the banks to freeze the accounts; however, Mr. Mahavir Mittal continued to operate the liquor shop.

9. That I later discovered Mr. Mahavir Mittal had opened forged accounts in the liquor shop's address and misappropriated funds. my name using

10. That thereafter, I filed an FIR against Mr. Mahavir Mittal and lodged several complaints with the Police Station and the Deputy Commissioner of Police, Income Tax Department.

11. That the ongoing legal proceedings before the Metropolitan Magistrate include recent hearings on 10.07.2023, 29.06.2024, and 21.09.2024 wherein the IO/Insp. Lalit Kumar is directed to file supplementary chargesheet and the matter has been further listed for 23.11.2024.

12. That due to the serious fraud committed by Mr. Mahavir Mittal, I was unable to decide the best course of action, resulting in missed hearing dates and failure to submit required documents.

13. That the matter should be given another chance to be presented at the Assessing Officer as the order of Metropolitan Magistrate is likely to be announced soon.

14. That, I have read and understood and state that what is stated therein is true and correct to the best of my knowledge and belief.

DEPONENT

Verification: I, Surender Gupta, the above deponent, do hereby verify that whatever is stated above is true and correct to the best of my information and belief.

Date: 22.10.2024

Place: New Delhi

*DEPONENT*

4. On perusal of the aforesaid affidavit, it is clear that the assessee was justified by sufficient cause in not able to furnish requisite details before the Id AO and Id NFAC. Before us, the assessee had prayed for one more opportunity to be granted for an effective representation of the case. Considering the totality of the facts and circumstances and also considering the fact that in earlier years also, this Tribunal on similar grounds had restored the appeals to the file of Id AO vide its order dated 15.7.2024, we deem it fit and appropriate to restore this appeal to the file of Id AO for denovo adjudication in accordance with law. Needless to mention that the assessee be given reasonable opportunity of being heard. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 14/11/2024.

-Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 14/11/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi