



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.108/LKW/2023
(Assessment Year: 2012-13)

Rajesh Kumar Gupta C606, Patel Nagar, Bareilly- 243001.	v.	ITO-2(3) C.R. Building, Civil Lines, Bareilly-243001.
PAN:AGUPG2877M		
(Appellant)		(Respondent)

Appellant by:	Shri A. P. Sinha, Adv
Respondent by:	Shri Sunil Kumar Rajwanshi, Addl CIT(DR)
Date of hearing:	25 11 2024

ORDER

PER ANADEE NATH MISSHRA, A.M.:

1. The present appeal has been filed by the assessee challenging the impugned order dated 20/02/2023 passed by the learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC) [*learned CIT(A)*] for the assessment year 2012-13. In this appeal, the assessee has raised the following grounds: -

"1. In the facts and circumstances of the case and in law because of the Ld. CIT, (Appeals), National Faceless Assessment Centre, Delhi erred while directing the Assessing Officer to treat peak credit in the bank account only as unexplained income.

2. In the facts and circumstances of the case and in law because of the Ld. CIT, (Appeals), National Faceless Assessment Centre, Delhi erred while not considering the business income of the appellant.

3. In the facts and circumstances of the case and in law because of the Ld. C.I.T.(Appeals), National Faceless Assessment Centre, Delhi erred while not considering the opening balance s on 01.04.2011 amount in to Rs. 39,44,236.00."

1.1 The assessee has raised the following additional grounds: -

“1. Because the Ld. Assessing Officer erred while not giving the copy of report of the National Investigation Wing which was the very basis of reopening the assessment.

2. Because the Ld. Commissioner of Income Tax, (Appeals) failed to appreciate that there is no independent application of mind before granting approval either by the Joint Commissioner of Income Tax or by the Pr. Commissioner of Income Tax. Approval has been granted in a mechanical manner.

3. Because the Ld. Commissioner of Income Tax, (Appeals) erred while directing the Assessing Officer to treat the peak credit amount of Rs. 56,88,995.00 as unexplained, which is highly unjustified, as it is covered by the opening balance of Rs. 39,44,236.00 as on 31.3.2011.

4. Because the Ld. Assessing Officer erred while reopening the assessment on presumption, surmises and suspicion which is impermissible.”

2. In this case, the assessment order dated 20/11/2019 was passed by the Assessing Officer (“AO”) under section 147/143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) whereby the assessee’s total income was assessed at Rs.1,41,54,620/- as against the returned income of Rs.2,48,620/-. In the aforesaid assessment order an addition of Rs.1,39,06,000/- was made by the AO under section 69A of the Act on account of cash deposit in bank account. The assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 20.02.2023, the Ld. CIT(A) disposed of the assessee’s appeal, sustaining the addition of Rs.1,39,06,000/- under section 69A of the Act, dismissing the assessee’s appeal. The present appeal has been filed by the assessee in Income Tax Appellate Tribunal (ITAT) against the aforesaid impugned appellate order dated 20/02/2023 of the Ld. CIT(A). In the course of appellate proceedings in ITAT, a paper book containing the following particulars was filed from the assessee’s side: -

Sl. No	Particulars
1	Copy of charge sheet bearing No. RC 08/2012/NIA/DLI.
2	Case law – Sabh Infrastructure Ltd vs. Assistant Commissioner of Income Tax (Delhi High Court) (2017) 398 ITR 198-208
3	Copy of National Investigation Agency, Ministry of Home Affairs, Government of India, report which pertains to some other person and not to the appellant.

3. At the time of hearing before us, the Ld. Counsel for the assessee submitted that in similar circumstances, in the assessment year 2013-14, Lucknow Bench of Income Tax Appellate Tribunal has restored the matter to the office of the Assessing Officer vide order dated 29.04.2024 in ITA. No.109/LKW/2023. He also drew our attention to the relevant portion of the aforesaid order dated 29.04.2024 which is reproduced as under: -

“7..... the assessee deserves one more opportunity to present his case that and, therefore, in the interest of substantial justice, I restore this file to the office of the AO with the direction to provide one more opportunity to the assessee to present his case and I also caution the assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.”

4. Ld. Counsel for the assessee also submitted that the Assessing Officer failed to provide the assessee with the material (letter/report/documents) on the basis of which notice of which is inconsistent with the order of the Hon'ble Delhi High Court in the case of Sabh Infrastructure Ltd Vs. ACIT (Delhi High Court) (2017) 398 ITR 198-208. He also submitted drawing attention to the paper book filed from the assessee's side, that the name of the assessee (Mr. Rajesh Kumar Gupta) does not appear in Case No.RC 08/2012/NIA/DLI of National Investigation Agency (NIA). In view of the foregoing, the Ld. Counsel for the assessee submitted that the matter in dispute in the present appeal and also be restored back to the file of the Assessing Officer with a direction to pass fresh assessment order in accordance with law.

5. The Ld. Sr. Departmental Representative (“DR”) for Revenue drew our attention to minutes of the meeting of Apex Level Multi Disciplinary Group at Central Level dated 20.02.2017 of Ministry of Home Affair, Government of India (referred to in foregoing

paragraph 2.1 of this order) wherein there is mentioned of suspected transaction in huge amount in the bank account of the assessee (Mr. Rajesh Kumar Gupta). After some deliberations representatives of both sides; the Ld. Counsel for the Assessee as well as the Ld. Counsel Sr. DR for Revenue, agreed that the issues in dispute in the present appeal, be restored back to the file of the Assessing Officer with a direction to pass fresh assessment order in accordance with law.

6. We have heard both sides. We have perused the materials available on record. On perusal of the assessment order dated 20.11.2019, it is found that the present case was taken up for the assessment u/s 147 r.w.s 148 of the Act on the basis of Case No. RC 08/2012/NIA/DLI. However, on perusal of the aforesaid paper book filed from the assessee's side, it is found that the assessee's name does not appear in the details of accused persons in the charge-sheet in Case No. RC 08/2012/NIA/DLI. On the other hand, we find that in the aforesaid minutes of meeting of Apex Level Multi Disciplinary Group at Central Level dated 20.02.2017 of Ministry of Home Affair, Government of India, there is mention of the name of the assessee to the effect alleging that suspected transaction in huge amount was made in the bank account of the assessee. There is lack of clarity in the factual matrix on the basis of the aforesaid documents which are presenting contradictory pictures. Moreover, in the assessment year 2013-14, in similar circumstances, vide the order dated 29.04.2024, Lucknow Bench of Income Tax Appellate Tribunal has already restored the issues to the file of the Assessing Officer. Further, representatives of both sides are in agreement at the time of hearing before us that issues in dispute. In view of the foregoing and in the specific facts and circumstances of the

present case before us, we set aside the impugned appellate order dated 20.02.2023 of the Ld. CIT(A) and we restore the issues in dispute regarding the addition of Rs.1,39,06,000/- to the file of the Assessing Officer with a direction to pass fresh assessment order in accordance with law. The directions given by the Lucknow Bench of ITAT in the aforesaid order dated 29.04.2024 for A.Y. 2013-14 in the case of the assessee in paragraph no. 7 of the order (relevant portion of which has already been reproduced in foregoing paragraph no. 3 of this order) will apply *mutatis mutandis* in the present case also.

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

Order was orally pronounced in the open court, after conclusion of hearing on 25/11/2024. This detailed order in writing is pronounced today in open court on 27/11/2024.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 27/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar