

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.4005/Del/2024
[Assessment Year : 2011-12]**

Viccky Bhalla 5, Prakash Mahal, M.A.Road, 109, Darya Ganj, Delhi-110092. PAN-AATPB5534D	vs	ITO, Ward No.55(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Prashant Shukla, Adv.	
Respondent by	Ms. Harpreet Kaur Hansra, Sr DR	
Date of Hearing	09.12.2024	
Date of Pronouncement	09.12.2024	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 02.07.2024 passed by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre, Delhi [“Ld.CIT(A)”] u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 27.12.2018 passed under section 147/143(3) of the Act pertaining to assessment year 2011-12.

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

“That the assessment order dated 27.12.2018 (hereinafter referred to as the assessment order) passed by learned Income Tax Officer, Ward 55(1), Delhi, and the order dated 02.07.2024 bearing ITBA/ NFAC/S/250/2024-25/1066323078 (1) (hereinafter referred to as the impugned order dated 02.07.2024) passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short, NFAC), Income Tax Department, Delhi, are erroneous and liable to be quashed by this Hon'ble Income Tax Appellate Tribunal for the following reasons in the facts and circumstances of the present case, which are without prejudice to one another.

A. *The Id. Commissioner of Income Tax (Appeals), NFAC, has passed the impugned order dated 02.07.2024 without giving any opportunity of being heard to the appellant, by referring to the hearing notices dated 12.07.2019 and 24.02.2020 issued by the different appellate authority, i.e. Commissioner of Income Tax (Appeals), Delhi-19*

Commissioner of Income Tax (Appeals), Delhi-30, that too after the lapse of more than four years by giving a perverse finding that the appellant had not responded to these hearing notices. Therefore, the said impugned assessment order is not sustainable under the law being passed in violation of the established principle of natural justice.

- B. The Id. Commissioner of Income Tax (Appeals), NFAC, has erred in not granting an opportunity to the appellant to file the written submission and present the case through the video conferencing in violation of the Faceless Appeals Scheme 2021, provided under section 250 (6B) of the Income Tax Act, 1961.*
- C. The impugned order dated 02.07.2024 passed by the Id. Commissioner of Income Tax (Appeals), NFAC, is liable to be set aside as much as the said order is a non-speaking order, perverse and has been passed without considering the facts available on record and the grounds raised in the appeal filed before it.*
- D. The Id. Commissioner of Income Tax (Appeals), NFAC, has wrongly affirmed the assessment order dated 27.12.2018 passed under section 147 of the Income Tax Act, 1961, without appreciating that no notice under section 148 of the said Act had been served upon the appellant.*
- E. The Id. Commissioner of Income Tax (Appeals), NFAC, has wrongly affirmed the assessment order dated 27.12.2018 passed under section 147 of the Income Tax Act, 1961, without appreciating that section 148 of the Income Tax Act, 1963, had wrongly been invoked in the present case on the basis of an erroneous fact that the appellant had transaction with M/s Bright Steels and Alloys.*
- F. The Id. Commissioner of Income Tax (Appeals), NFAC, has wrongly affirmed the assessment order dated 27.12.2018 without appreciating that the Id. A.O. has wrongly assumed that the appellant had taken the friendly loan of Rs.3,15,27,365 from Vicky Bhalla H.U.F, on the basis of cumulative figures appearing in the bank statement, ignoring the fact that the loan was taken in different installments and the same was repaid by the appellant time to time.*
- G. The Id. Commissioner of Income Tax (Appeals), NFAC, has wrongly affirmed the assessment order dated 27.12.2018 without appreciating that the Id. A.O. has wrongly made an addition of Rs.3,84,52,398 by invoking section 68 of the Income Tax Act, 1961, despite the fact that the said loan amount was repaid by the appellant during the relevant year itself.*
- H. The Id. Commissioner of Income Tax (Appeals), NFAC, has passed the perverse order as much as it has reiterated erroneous finding given by the Id. A.O. in the assessment order dated 27.12.2018 that the appellant failed to prove the indemnity, genuineness and creditworthiness of the lenders, without considering the documents/facts available on record.*

- I. *The Id. Commissioner of Income Tax (Appeals), NFAC, as well as the Id. A.O., has not appreciated the business transactions of the appellant's firm as explained by the appellant, and which were duly corroborated through banking transactions and other documentary evidences while estimating the profit of the appellant's firm without any basis and rationality.*
- J. *The Id. Commissioner of Income Tax (Appeals), NFAC, and the Id. A.O., has wrongly made an estimation of the appellant's business profit on the basis of the credit entries of the bank statement but ignoring the other entries of the same bank statement which corroborates the appellant's submissions.*
- K. *The Id. Commissioner of Income Tax (Appeals), NFAC, as well as the Id. A.O. has wrongly assumed the profit at the rate of 20% of the gross receipts (other than unsecure loan) without any rationality and explanation thereof, by ignoring the established principle of the law that the assumption and presumption cannot be a basis to pass an order and fasten a huge tax liability on the assessee.*
- L. *The Id. Commissioner of Income Tax (Appeals), NFAC, as well as the Id. A.O. has wrongly assumed the profit at the rate of 20% of the gross receipts (other than unsecure loan) without considering the realities of the business trading of DEPB licenses and the facts of the present case.*
- M. *The Id. Commissioner of Income Tax (Appeals), NFAC, has wrongly affirmed the assessment order dated 27.12.2018 without appreciating that the Id. A.O. has wrongly made the additions in the returned income without giving any opportunity to the appellant to explain the same.*
- N. *The Id. Commissioner of Income Tax (Appeals), NFAC, has not appreciated that the Id. A.O. has wrongly charged the interests under the various sections of the Income Tax Act, 1961 and initiated the penalty proceeding under section 271(1)(c) of the Income Tax Act, 1961.”*

3. As per multiple grounds of appeal, the assessee has essentially challenged the additions made by the Assessing Officer (“AO”) under section 68 of the Act and estimation of profits etc. whereby the return of income of INR 770,890/- was assessed at INR 5,54,68,620/-.

4. When the matter was called for hearing, the Ld. Counsel for the assessee submitted at the outset that the first appellate order has been passed by Ld.CIT(A) in *ex-parte* without giving any opportunity to the assessee. The Ld. Counsel for the assessee adverted to the first appellate order dated 02.07.2024 under challenge wherein the Ld.CIT(A) has alleged that the assessee has not

responded to hearing of notices dated 12.07.2019 and 24.02.2020. The Ld. Counsel for the assessee pointed out that notice dated 12.07.2019 was issued by Ld.CIT(A)-19, Delhi to which the assessee filed response seeking time. In response to the notice dated 12.07.2019, the assessee approached the Ld.CIT(A)-30, Delhi in whose jurisdiction, the matter was earlier transferred from Ld.CIT(A)-19 and submitted a 'paper book' and also requested for immediate hearing of the appeal. Another notice was issued by Ld.CIT(A)-30, Delhi which however, was not responded by the assessee. The first appellate order has been however passed by National Faceless Appeal Centre ("NFAC"), Delhi. The Paper Book filed by the assessee before the Ld.CIT(A)-30, Delhi was not taken cognizance and no fresh notice of hearing was issued by NFAC (Appeal Centre) either. Hence, the order passed by the Ld.CIT(A) without issue of notice and without considering paper book is clearly in violation of principle of natural justice. Ld. Counsel for the assessee thus, sought suitable relief in the matter.

5. The Ld. Sr. DR for the Revenue on the other hand, relied upon the appellate order.

6. We have carefully considered the rival submissions and perused the material available on record. As pointed out on behalf of the assessee, it is self evident that no opportunity, far less a reasonable opportunity has been given to the assessee by NFAC, Delhi which is stated to have been filed for disposal of the appeal. The NFAC has apparently not considered the Paper Book stated to be filed before the Ld.CIT(A)-30, Delhi. Hence, it is manifest that the first appellate order has been passed in gross violation of principle of natural justice and hence cannot be countenanced in law. The impugned first appellate order is accordingly set aside and the appeal is restored to the file of NFAC, Delhi for *denovo* adjudication of the appeal in accordance with law after giving proper opportunity to the assessee. All issues raised by the assessee are kept open for adjudication in accordance with law by NFAC. The assessee may adduce such evidences and furnish such explanation as may be considered expedient in support of his greivances.

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

Order pronounced in the open Court on 09th December, 2024.

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

** Amit Kumar **

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI