



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.394/LKW/2024
Assessment Year: 2018-19

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| M/s Exclusive Selection Chikan (P) Ltd. 36, Cantt. Road G.F. Mahabir Complex Lucknow | v. | National E-Assessment Centre Delhi |
| TAN/PAN:LKNEO5369A | | |
| (Appellant) | | (Respondent) |

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|------------------------|-----------------------------------|----|------|
| Appellant by: | Shri Rakesh Garg, Advocate | | |
| Respondent by: | Shri Sunil Kumar Rajwasnshi, D.R. | | |
| Date of hearing: | 12 | 12 | 2024 |
| Date of pronouncement: | 23 | 12 | 2024 |

ORDER

This appeal has been preferred by the assessee against the order dated 26.09.2023, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2018-19.

2. The brief facts of the case are that the assessee filed its return of income for the year under consideration on 31.10.2018, declaring a total income of Rs.11,67,632/-. The case of the assessee was selected for limited scrutiny under CASS for the reason that the purchase value of property was less than the value as per the Stamp Authority under section 56(2) of the Income Tax Act, 1961 (hereinafter called "the Act"). It was

noticed by the Income Tax Department that the assessee, during the year under consideration, had purchased an immovable property, namely Office Space Nos.201, 202, 203, Second Floor, Mahaveer Complex, 36, Cantt. Road, Lucknow for a consideration of Rs.40,00,000/-. The market value of the same was fixed by the Stamp Authority at Rs.58,12,00/-. The assessee was asked to explain as to why the difference between the Stamp Value of Rs.58,12,000/- and the acquisition value of Rs.40,00,000/- should not be added to the income of the assessee under section 56(2)(x) of the Act. The assessee vide e-replies dated 21.12.2019 and 23.12.2019 submitted that the case of the assessee did not fall under the ambit of the provisions of section 56(2)(x) of the Act. After considering the replies furnished by the assessee, the AO proposed a draft order and required the assessee to show cause as to why addition of Rs.18,12,200/- (58,12,000 – 40,00,000) under section 56(2)(x) of the Act should not be made to the income of the assessee. Since there was no response to the said show cause notice dated 20.11.2020 from the assessee, the AO completed the assessment under section 143(3) read with sections 143(3A) and 143(3B) of the Act, assessing the total income of the assessee at Rs.29,79,630/- after making addition of Rs.18,12,200/- under section 56(2)(x) of the Act.

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed by passing an order ex-parte qua the assessee.

4. Now, the assessee has approached this Tribunal challenging the dismissal of its appeal by the NFAC by raising the following grounds of appeal:

1. Because the Learned "CIT (Appeal)" failed to appreciate the full facts and the circumstances of the case while completing the assessment on Rs.29,79,632/- against the returned income of Rs.11,67,632/-.

2. Because the Learned officer and the 'Learned CIT (Appeals) National Faceless Appeal Center' erred in not providing reasonable and proper opportunity before completing the order.

3. Because the Learned officer and the 'Learned CIT (Appeals) National Faceless Appeal Center' erred both on facts and in law in making an addition of Rs.18,12,000/- on account of addition of under section 56(2)(x) of the Income-tax Act 1961.

4. Because the Learned officer and the 'Learned CIT (Appeals) National Faceless Appeal Center' erred both on facts and in law in passing order against the settled judicial matter as pronounced by Hon'ble ITAT Vishakhapatnam in the case ACIT Vs Hira panna Jewelers (2021) 128 taxmann.com; (this may be removed as ITAT Vishakhapatnam is at par with Hon'ble ITAT Lucknow Bench, Lucknow).

5. *Because the Learned officer and the 'Learned CIT (Appeals) National Faceless Appeal Center, is without any merits and in simple based on mere hypothesis, conjuncture & surmises and needs to be cancelled and the income as returned by the appellant be accepted.*

6. *Because no proper reasons has been forwarded both by the assessing officer and by the Ld. CIT (Appeal) National Faceless Appeal Center. In making and confirming and has relied on wrong facts and based on presumption.*

7. *Because order of the Learned CIT (Appel) National Faceless Appeal Center is arbitrary, capricious, misconceived, erroneous and against the principal of natural justice.*

8. *Because the above grounds of appeal will be argued in detail at the time of hearing and the assessee craves leave to submit addition ground of appeal if any and/or amend, vary, modify, alter the grounds of appeal at or before the time of hearing.*

5. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that there is a delay of 203 days in filing the appeal before the Tribunal. He submitted that the assessee had filed an application dated 12.06.2024 for condonation of delay, duly supported by an Affidavit of the Director of the firm, stating therein that the assessee was out of station during the relevant period, as his father was admitted in Hospital due to serious illness and that the copy of order sent by the NFAC on the old email address of the assessee did not come in the knowledge of

the assessee, resulting in a delay in filing of the appeal before the Tribunal. It was prayed that the delay caused in filing the appeal was not deliberate and that it was beyond the control of the assessee, which may please be condoned and the appeal be heard on merits.

6. The Ld. Sr. D.R. had no objection to the delay being condoned.

7. In view of the prayer made by the Assessee, supported by an Affidavit and no objection by the ld. D.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

8. During the course of hearing before me, the Ld. A.R. submitted that both the authorities below have not afforded sufficient opportunity to the assessee to enable him to effectively present its case. He prayed that in the interest of substantial justice, the matter may be restored to the file of the AO for deciding the issue in dispute afresh after providing reasonable opportunity of hearing to the assessee.

9. The Ld. Senior D.R. had no objection to the restoration of appeal to the AO.

10. I have heard the ld. Senior Departmental Representative as well as the ld. AR and have also perused the material on record. Looking into the facts of this case, I am of the considered

view that the Assessee deserves one more opportunity to present its case 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 its case. 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.

11. In the result, the appeal of the Assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 23/12/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:23/12/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar