

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

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

ITA No.1513/Del/2024
(ASSESSMENT YEAR-2021-22)

Lokesh Gupta 6/73, Dobhi Wara Farsh Bazar, Shahdara Delhi-110032 PAN:AGCPG5037D (Appellant)	Vs.	Income Tax Officer Ward-58(7) Delhi (Respondent)
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Assessee by	Shri Amit Kaushik, Adv.
Respondent by	Shri Pramod Kumar, Sr. DR

Date of Hearing	16/10/2024
Date of Pronouncement	16/10/2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal of the Assessee is against order dated 06/02/2024 of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of Assessment Order dated 23/12/2022 of the Assessment Unit [hereinafter referred to as "Ld. AO"] for the Assessment Year 2021-22.

2. Brief facts are that assessee derives income from business of whole sale and retail trade of scrap items like Copper, Aluminum, Brass and Seera under the name the proprietorship “M/s Jai Shree Ram Trading Co.” The assessee filed its return of income in for the Assessment Year 2021-12 relevant to the Financial Year 2020-21, electronically u/s. 139 on 30/03/22022 declaring total income of Rs.9,05,810/-. On perusal of submission of assessee and ITR, it was found that assessee had not got audited its books of accounts even Sales/Gross receipts of business amount to Rs.16,58,28,974/- and had not furnished Form No.3CB. Details of opportunities given to appellant assessee are as under:-

Type of notice/com munication	Date of notice/comm unication	Date of compliance given	Response of the assessee receive/not received	Response if received	(Full/part/ adjournme nt)
143(2)	28/06/2022	13/07/2022	Not Received	N/A	N/A
142)1)	17/08/2022	01/09/2022	Not Received	N/A	N/A
142(1)	29/09/2022	07/10/2022	Not Received	N/A	N/A
Issued-Centralized communication in no responsive case	11/11/2022		Not Received	18/11/2022	Part
142(1)	23/11/2022	28/11/2022	Not Received	N/A	N/A
SCN	07/12/2022		Received	11/12/2022	Part
142(1)	13/12/2022	17/12/2022	Received	17/12/2022	Part

3. In course of assessment, on the basis of replies expenditure on account of bogus purchase amounting to Rs.4,39,49,603/- (25% of total purchase amount of Rs.17,57,98,414/-) was added to the total income u/s 69C and to be taxed at 60% as per provisions of section 115BBE of the IT Act.

4. Appellant/assessee filed appeal before Ld. CIT(A) which was dismissed vide order dated 06/02/2024.

5. Being aggrieved, appellant/assessee preferred present appeal with following grounds:-

“1. That the NFAC grossly erred in law and on the facts and circumstances of the case in dismissing the appeal of the Appellant by confirming the order dated 23/12/2022 passed by the Ld. Assessing Officer under section 144 of the Act without appreciating that the same was without jurisdiction and bad in law.

2. That the NFAC grossly erred in law and on the facts and circumstances of the case in dismissing the appeal of the Appellant by confirming the order dated 23/12/2022 passed by the Ld. Assessing Officer under section 144 of the Act in violation of the principles of natural justice.

3. That the NFAC grossly erred in law and on the facts and circumstances of the case in dismissing the appeal of the Appellant by confirming the order dated 23.12.2022 passed by the Ld. Assessing Officer under section 144 of the Act without application of mind to the material on record.

4. That the NFAC grossly erred in law and on the facts and circumstances of the case in dismissing the appeal of the Appellant by confirming the order dated 23/12/2022 passed by the Ld. Assessing Officer under section 144 of the Act making addition of Rs.4,39,49,603/- to the income of Appellant.

5. That the NFAC grossly erred in law and on the facts and circumstances of the case in dismissing the appeal of the Appellant by confirming the order dated 23/12/2022 passed by the Ld. Assessing Officer under section 144 of the Act making addition of Rs.4,39,49,603/- to the income of the Appellant without considering the provisions of section 69C of the Act.

6. That the NFAC on facts and in law erred in not deleting the interest levied by the Ld. Assessing Officer under section 234A, 234B and 1234C of the Act.

7. The Appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

8. That all the grounds are without prejudice to each other.”

6. Learned Authorized Representative for appellant/assessee submitted that the Learned CIT(A) failed to appreciate that assessee in Form No.35 had opted for service of notices in person and not through opted email. However, all notices for hearing of the appeal were sent through email which were not received by the appellant/assessee. Ld. CIT(A) dismissed the appeal in absence of appellant/assessee in violation of principle of natural justice, so the matter may be remanded to the Ld. CIT(A). Reliance was placed on order dated 14/08/2024 in ITA No.315/Ahd/2024 titled as Luv Procon Pvt. Ltd. vs. ITO of Hon'ble ITAT, Ahmedabad.

7. The Learned Authorized Representative for Department of Revenue did not express any objection.

8. From examination of record, it is crystal clear that in Form No.35 assessee had not indicated its choice of notice/communication through email. However, Learned CIT(A) had sent all notices to the assessee by way of email and no physical notice was sent to the assessee. Learned CIT(A) dismissed the appeal of assessee in absence of assessee.

9. Hon'ble ITAT, Ahmedabad in ITA No.315/Ahd/2024 titled as Luv Procon Pvt. Ltd. vs. ITO in para 8 held that:-

“8. We have considered the submissions of the assessee and the facts of the case. It is found from Form No.35 that all the assessee had indicated its choice that no notice/communication may be sent on email. It appears from the order of Ld. CIT(A) that all the opportunities provided by him were by way of e-notices and no physical notice was sent to the assessee. When the assessee had categorically notified in Form No.35 that no notice/communication should be on email, the Ld. CIT(A) was not correct in dismissing the appeal by sending e-notices only. The assessee had also explained the reason for delay in Form No.35. It was submitted that the Director had lost his password and could not check his email account on which the order was sent. The matter come to the notice of the assessee when there was a notice for refund adjustment. The Ld. CIT(A) may decide the delay in filing of appeal before him on merits, taking a considerate view in the matter and after allowing a proper opportunity of being heard to the assessee. The matter is, therefore, set aside to the Ld. CIT(A) for fresh adjudication of the matter after allowing opportunity to the assessee by sending physical notices along with e-notices.”

10. In view of above material facts and well settled principle of law passing of impugned order has led to miscarriage of justice which is required to be remedied. Accordingly impugned order is set aside. The matter is restored to the file of Learned CIT(A) for fresh adjudication in accordance with law.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16th October, 2024.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 16/10/2024
Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI