

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.25/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Swiss Lifestyle
Naidu Complex, Near Hotel Babylon Inn,
Jail Road, Raipur-492 001
PAN: ACGFS7296G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-3(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.03.2025

घोषणा की तारीख / Date of Pronouncement : 21.03.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

This appeal preferred by the assessee firm emanates from the order of the Ld. CIT(Appeals)/NFAC, dated 25.07.2024 for the assessment year 2017-18 as per the following grounds of appeal on record:

“1. The order passed u/s.144 is illegal, invalid and bad in law though the assessee has filed the reply from time to time. CIT(A) erred in sustaining the order of A.O and dismissing the appeal of the Assessee against the law of Natural justice.

2. The learned assessing officer erred in making addition of Rs.30,48,500/-and Rs.8,86,366 treating the ROI as invalid and CIT(A) erred in sustaining the same.

3. That the A.O erred in treating the ROI filed by the Assessee as Invalid. Since the ROI filed is Valid and since Response to Queries raised during the Assessment Proceedings were duly submitted along with evidence, which have not been considered by the A.O, entire addition and Assessment u/s.144 is invalid and unjustified.

4. The A.O erred in taking Rs.5.00 Lakhs on adhoc basis as explained instead of entire Rs.35,48,500/-without any justification.

5. That the Ld. CIT(A) erred in dismissing the Appeal of the Assessee sustaining the Addition of Rs.30,48,500/-and Rs.8,86,366 treating the ROI as invalid.

6. The learned assessing officer erred in not considering the reply filed by the assessee from time to time and passed ex-party order u/s.144 on assumption and presumption basis, therefore order passed is unjustified, unwarranted and excessive.

7. The learned assessing officer erred in not accepting the contention of the assessee and made addition u/s. 68 and taxed u/s.115BBE at Rs.30,48,500/-, and CIT(A) erred in sustaining the same therefore order passed is unjustified, unwarranted and excessive.

8. The learned assessing officer erred in making addition of Rs.30,48,500/- as unexplained money u/s.68 without pointing out any defect in the books of accounts and CIT(A) erred in sustaining the same, therefore order passed is unjustified, unwarranted and excessive.

9. The Learned assessing officer erred in rejecting the return filed by the assessee and made addition of Rs.8,86,366/- as business income and CIT(A) erred in sustaining the same, therefore order passed is illegal, invalid and bad in law.

10. The learned assessing officer erred in partly considering the books and partly rejecting the same, therefore the order passed is unjustified, unwarranted and excessive.

11. The assessee denied the liability of interest charged U/s. 234A, 234B and 234C of the Act the same may kindly be deleted.

12. The assessee craves leave to amend, add or take a new ground or grounds at the time of hearing.”

2. At the very outset, the Ld. Counsel for the assessee firm submitted that the present appeal involved a delay of 116 days. In that regard, the Ld. Counsel had filed condonation petition as well as affidavit on record. I have carefully perused the contents of the affidavit and condonation petition. I am of the considered view that the reasons for delay are definitely and absolutely cannot be attributed to any malafide intention of the assessee, if any. Rather, it is submitted by the Ld. Counsel that the assessee who is partner of the Swiss Lifestyle is suffering from cancer and for medical requirement, he has to visit Mumbai, for which he is unable to look into the income tax matters. The Ld. Counsel submitted that he is also not able to run the business due to which financial conditions have

deteriorated. It is also stated by the Ld. Counsel that at the relevant point of time there was no professional help to guide the assessee in the income tax matters. Considering all these reasons, I condone the delay of 116 days and proceed with the matter on merits.

3. The brief facts in this case are that the assessee is a partnership firm and doing business of luxury items like watches, perfumes etc. has e-filed its return of income alongwith Audit Report u/s.44AB of the Income Tax Act, 1961 (for short 'the Act') on 24.09.2019 declaring an income of Rs.9,43,232/-. The assessee has maintained regular books of account and maintained Cash Book, Ledger, Purchase Bill, Expenses Bill and other vouchers files, etc. The turnover of the assessee has exceeded of Rs.1 crore. The assessee has obtained Tax Audit Report and the same has been furnished alongwith the return of income filed by the assessee. The Assessing Officer issued notices u/s.142(1) of the Act as well as show cause notice to the assessee.

4. During the course of assessment proceedings, the assessee had duly complied with the said notices and filed the written submission a/w. all the details. The Assessing Officer observed that during the year under consideration, the assessee has deposited total cash and cheque of Rs. 3,27,38,600/- out of total cash sales of Rs.3,47,81,095/-. The assessee has deposited total amount of Rs.47,18,500/-in its bank account out of

which the assessee has deposited Rs.35,48,500/- specified bank notes and Rs.11,70,000/- as the assessee was having cash balance of specified bank notes. The assessee has submitted all the details with respect of deposition of specified bank notes during demonetization period in course of assessment proceedings. However, the Assessing Officer held the amount of cash Rs.5,00,000/- in SBNs as explained and made addition of balance amount of total cash deposits made in SBNs i.e. Rs.30,48,530/- [Rs.35,48,500/- (-) Rs.5,00,000/-] as unexplained money u/s.68 of the Act and invoked section 115BBE of the Act. Finally, the A.O made a separate addition of Rs.8,86,366/- @ 1.87% by adopting gross receipt at Rs.4,73,99,266/-.

5. On appeal before the first appellate authority, the Ld. CIT(Appeals)/NFAC sustained the additions made by the A.O. As regards the addition of Rs.30,48,500/- the Ld. CIT(Appeals)/NFAC upheld the same observing as follows:

“5.4.3: I have carefully perused the submissions filed by the appellant as well as the findings given by the AO in Assessment Order. I do not agree with the contention of the appellant that levy of tax @ 60% u/s.115BBE on addition of Rs.30,48,500/- u/s.68 is against the law. Section 115BBE is very well applicable for A.Y. 2017-18 and thus the appellants contention is not accepted. As regards the addition of Rs.30,48,500/- u/s. 68, I concur with the AO that considering the fact that out of the total cash deposits, cash of Rs.35,48,500/-was deposited in the denomination of old notes/SBNs and nature of assessee's business as well as the claim of the assessee, it would be appropriate if cash of Rs.5,00,000/-out of the total deposit of Rs.35,48,500/- in SBNs is considered to be explained. Hence,

the remaining amount of Rs.30,48,500/- (i.e.Rs.35,48,500/- less Rs.5,00,000/-) has remained unexplained. I find no infirmity in this addition of Rs.30,48,500/- as unexplained cash in the hands of the appellant to be taxed u/s.115BBE of the Act and this addition is confirmed . Hence, ground No. 4 & 5 are dismissed.”

As regards the addition of Rs.8,66,366/-, the Ld. CIT(Appeals) upheld the same observing as follows:

“5.5.3. I have carefully perused the submissions filed by the appellant as well as the findings given by the AO in Assessment Order. The Assessing Officer has correctly reduced the total turnover of Rs.5,04,47,766/- shown by the appellant with Rs.30,48,500/- (the amount added u/s.68 of the Act as unexplained cash deposit) and correctly applied net profit @ 1.87% (the rate of net profit declared by the appellant itself) to this reduced turnover of Rs.4,73,99,266/- which comes to income from business amounting to Rs.8,66,366/-. I find no infirmity in the decision of the AO in applying net profit @ 1.87 % to the turnover of Rs.4,73,99,266/- computed by the AO by reducing the unexplained cash deposit of Rs.30,48,500/- from the turnover of Rs.5,04,47,766/- shown by the appellant. Therefore the addition of Rs.8,66,366/- is confirmed and the ground no. 6 is dismissed.”

6. The assessee being aggrieved with the order of the Ld.CIT(Appeals) has carried the matter in appeal before the Tribunal.

7. I have carefully considered the submissions made by both the parties and facts and circumstances of the case. On perusal of the assessment order, the Assessing Officer made an addition of Rs.30,48,500/- and another separate addition of Rs.8,66,366/- towards unexplained cash credit u/s.68 of the Act and the total tax effect is Rs.23,54,966/-. As regards the aforesaid additions, there is no dispute

by the department regarding the business conducted by the assessee. Also, there is no dispute by the department regarding the purchase and sales as appearing in the books of account which had also been accepted by the department, therefore, there is no possibility for the Ld.CIT(Appeals) to hold that these deposits were outside the normal course of business of the assessee. The addition has been made by the Assessing Officer because he was not convinced with the source of the cash deposits in the bank which was confirmed by the Ld. CIT(Appeals). On a perusal of the order of the Ld. CIT(Appeals), it is noticed that the Ld. CIT(Appeals) has not passed a speaking order in terms of Sections 250(4) and (6) of the Act. In that regard, the order of the Ld. CIT(Appeals) becomes a cryptic, arbitrary and bad in law. The basic fact is that when the genuineness of the assessee's business is not disputed or any undisclosed sources has not been unearthed by the department and nothing is there on record which shows that the assessee had earned income from other sources other than from its business. Considering these facts, I direct the Assessing Officer to delete the addition of Rs.30,48,500/- from the hands of the assessee.

8. As regards the addition of Rs.8,66,366/-, on a perusal of the assessment order, it is noticed that the Assessing Officer had rejected the return of income filed by the assessee as the same was filed belatedly. However, as per the return of income, the assessee had filed return of

income in compliance to notice u/s.142(1) of the Act on 24.09.2019 declaring total income of Rs.9,43,232/- i.e. much before the completion of assessment. The Assessing Officer while passing the assessment order made certain adjustment and computed business income at Rs.8,86,366/-. Further, the Assessing Officer while making computation has determined income at Rs.9,43,232/- which suggests that the assessment order is self-contradictory. On a perusal of the order of the Ld. CIT(Appeals), it is noticed that the Ld. CIT(Appeals) has not passed speaking order in terms of Sections 250(4) and 250(6) of the Act and summarily sustained the addition made by the Assessing Officer. In that regard, the order of the Ld. CIT(Appeals) becomes a cryptic, arbitrary and bad in law. I am of the view that when the business of the assessee had not been disputed by the department and books of account has been accepted, then there is no justification for the lower authorities in making/sustaining the addition of Rs.8,86,366/-. Considering the aforesaid facts, I direct the Assessing Officer to delete the addition of Rs.8,86,366/- from the hands of the assessee.

9. As per the above terms the grounds of appeal raised by the assessee stands allowed.

10. In the result, appeal of the assessee is allowed.

Order pronounced in open court on 21st day of March, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 21st March, 2025.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur