

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH  
MUMBAI**

**BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 427/MUM/2025  
(Assessment Year : 2017-18)**

Saboo Silk Emporium Standard House 83 Queens Road Marine Lines Mumbai-400002.	Vs.	Deputy Commissioner of Income Tax Circle 19(3), Aayakar Bhavan, Churchgate, Mumbai-400020.
<b>PAN/GIR No. AALFS2210F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Rakesh K. Malwani
Revenue by	Shri. Bhangapatil Pushkaraj Ramesh, Sr. DR
<b>Date of Hearing</b>	<b>26/03/2025</b>
<b>Date of Pronouncement</b>	<b>03/04/2025</b>

**आदेश / O R D E R**

**PER VIKRAM SINGH YADAV (A.M):**

This appeal has been preferred against the impugned order dated 09.12.2024 passed in Appeal no. CIT (A) 34, Mumbai/10445/2019-20 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2017-18, wherein the assessee has taken the following grounds of appeal:

*“ 1 Considering the facts and circumstances of the case and in law, it is submitted that order passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter, for the sake of brevity, referred to as 'the Act'), being in violation of Paragraph No. 4.4 of Instruction No. 01/2018 dated February 12, 2018, mandating closure of window for e-filing facility before passing of assessment order has not been complied with as can be seen from the fact that though the appellant's submission dated December 13, 2019, is accepted, the assessment order is deemed to have been passed on December 12, 2019, and therefore a violation having been committed of the laid down procedure making the order passed as bad in law and void abinitio which cannot be acted upon, and the appellant pleads that the said order be declared as bad in law and void abinitio.*

*2. Considering the facts and circumstances of the case and in law, the Learned Fint Appellate Authority (hereinafter, referred to as 'the Learned CIT(A)') ought to have granted further time for submission at the request of the appellant and it is prayed that the order of learned CIT(A) be set aside.*

*3. Considering the facts and circumstances of the case and in law it is prayed that Provident Fund paid of Rs. 527303 be allowed as deduction as the appellant is now in a position to produce the challan as required.*

*4. Considering the facts and circumstances of the case and in law it is prayed that deduction u/s 80G of the Act of Rs. 2.500 on donation of Rs. 5,000 be allowed.*

*5. Considering the facts and circumstances of the case and in law it is prayed that Miscellaneous Expenses being Card Joining Fees of Rs., 27,600 and Card Renewal fees of Rs. 2,975 be allowed.*

*6. Considering the facts and circumstances of the case and in law it is prayed that selling and other administrative expenses disallowed on ahdoc basis to the extent of Rs. 3,01,081 by the Learned CIT(A) be allowed.*

*7. Considering the facts and circumstances of the case and in law it is prayed that Interest and penalty of Rs. 5.89,988 incurred by the appellant and suo moto disallowed by the appellant be allowed at the time of filing Return of Income, be allowed.*

*8. The appellant craves leave to add and/or alter and/or amend any ground(s) of appeal as may be considered necessary.”*

2. Briefly the facts of the case are that the return of income was filed by the assessee on 04.11.2017, declaring total income of Rs. 37,55,360/-. Thereafter the case was selected for scrutiny

and notice u/s. 143(2) and 142(1) were issued calling for the necessary information/documentation and the assessment order was passed u/s. 143(3) dated 12.12.2019 wherein the assessed income was determined at Rs. 57,83,260/-. The assessee thereafter carried the matter in appeal before the Id CIT(A) wherein part relief was granted by the Ld. CIT(A) and against the addition sustained by the Ld. CIT(A), the assessee is in appeal before us.

3. During the course of hearing, the Ld. AR firstly submitted that the assessment order has been passed without considering the submissions filed by the assessee on 13.12.2019. It was submitted that though the due date for filing the submission was 04.12.2019, since the compliance window for e-filing facility was opened, the assessee duly filed the submissions on 13.12.2019, however, by that time, the order has already been passed by the AO on 12.12.2019. It was accordingly submitted that firstly the submissions so filed by the assessee have not been considered by the AO and secondly, there is also a violation of instruction No. 01/2018 dated 12.02.2018 which mandates closure of window for e-filing facility before passing of the assessment order which has not happened in the instant case. It was further submitted that during the appellate proceedings, the assessee sought time and filed the necessary application, however, Ld. CIT(A) without allowing the opportunity to the assessee has gone ahead and passed the impugned order. It was accordingly submitted that neither

before the AO nor before the Ld. CIT(A), the assessee has been granted adequate opportunity to represent its case.

4. It was further submitted that regarding the addition of Rs. 527,303/- towards the provident fund deposit, the assessee is in a position to produce the necessary challan and the payment proof and the said disallowance is clearly not sustainable in law. Regarding deduction u/s. 80G, it was submitted that the payment has been made from the bank account of the assessee's firm and therefore the assessee has rightly claimed the deduction u/s. 80G of the Act. Regarding credit card joining and renewal fees, it was submitted that even though the credit cards were issued in the name of the partners of the firm, however, the amount has been spent on the behalf of the firm and the same has rightly been claimed by the assessee firm while filing its return of income. Regarding sustenance of disallowance of Rs. 3,01,081/-, it was submitted that the same are clearly adhoc disallowances which have wrongly been sustained by the Ld. CIT(A) without taking into consideration the facts that the books of accounts have been duly audited and have not been rejected by the AO and sample bills were duly produced during the course of assessment proceedings and no specific defect has been pointed out by the AO. Regarding disallowance of interest and penalty of Rs. 589,988/-, it was submitted that though the assessee has suo-moto disallowed the same while filing the return of income, however, these are not in the nature of

payments towards any offenses or which is prohibited by law and even though assessee has suo-moto disallowed the same while filing the return of income, where the expenses are duly allowable under law, the assessee cannot be put at a disadvantage position by sustaining the said disallowance and where the said claim is made before the Ld. CIT(A), the latter should have decided the same on merits of the same instead of holding that the same is not emerging out of the assessment order so passed by the AO. It was accordingly submitted that even on merits, the assessee deserve the necessary relief.

5. Per contra, the Ld. DR was heard who has submitted that adequate opportunity has been provided by the AO as well as by the Ld. CIT(A) and the disallowance have been rightly sustained by the Ld. CIT(A) in absence of necessary evidences on record. He accordingly supported the orders of the lower authorities.
6. We have heard the rival contentions and perused the matter available on record. It is a matter of record that the assessee has filed the necessary submissions before the AO and at the relevant point in time, the window for e-filing facility was very much open and given that the assessment order has already been passed prior to the date of filing of the submissions, the AO has not taken into consideration the submissions so filed by the assessee. Further, it is also a matter of record that the Ld. CIT(A) has issued three notices and in response to the last

of the notices dated 21.11.2024, the assessee has sought time as evident from the adjournment application placed on record. The Ld. CIT(A) without rejecting the adjournment application and without issuing any further notice to the assessee has gone ahead and passed the impugned order. In light of the same, we find that the assessee deserves one more opportunity to place on record the necessary submissions/ documentation in respect of various disallowances sustained by the Ld. CIT(A) and therefore in the interest of justice and fair play, we deem it appropriate to set aside the matter to file of Ld. CIT(A) to decide the same afresh after providing reasonable opportunity to the assessee. The contentions raised on the merits of the case are left open and the assessee is at liberty to raise the same before the Ld. CIT(A) who shall consider and decide the same as per law.

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

Order pronounced in open court on 03.04.2025.

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(VIKRAM SINGH YADAV)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 03/04/2025

Anandi Nambi, *Steno*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**