IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.217/Nag./2024
(Assessment Year : 2018–19)

Kiran Anil Gothi
Akola Road, Shelu Bazar .... Appellant
Washim 444 402 PAN – AHOPG0429Q

v/s

Income Tax Officer .... Respondent
Ward–1, Akola

Assessee by : Shri Jineshi Thakkar
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 13/02/2025	Date of Order – 25/02/2025

O R D E R

Aforesaid appeal by the assessee is against the impugned order dated 27/02/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2018–19.

2. The core issue which the assessee has raised in this appeal relates to the addition of ₹ 34,31,971, on account of cash credit under section 68 r/w section 115BBE of the Income Tax Act, 1961 (*"the Act"*).

3. During the assessment proceedings, the assessee could not substantiate its case and as stated by the Assessing Officer in his assessment

order, the assessee failed to offer any explanation on the issue of cash credit. Hence, the Assessing Officer passed ex-parte order by dismissing the claim of the assessee holding as under:-

> *"2. Subsequently, statutory notices u/s. 143(2) and u/s. 142(1) of the I.T. Act, 1961 were issued and duly served upon the assessee through ITBA module.*
>
> *3. In the instant case it is found from the ITR for the A.Y 2018-19 that assessee has shown Rs.34,31,971/- as Commission receipt. In this regard assessee was requested to furnish the details of commission received and name, PAN of the persons from whom the commission received and also requested to furnish the bank statement highlighting the transactions alongwith other relevant documents. The identity, credit worthiness and genuineness of transaction are required to be verified in respect of the persons who have paid commissions. But in spite of giving ample opportunities assessee neither bothered to reply nor furnish requisite documents. Hence, it implies that the assessee has failed to explain the nature and source of above mentioned amount received.*
>
> *As per provision of Section 68 of the I.T. Act, 1961, any sum found credited in the books of account of the taxpayer for which he/she offers no explanation about the nature & source thereof or the explanation offered by him/her is not in the opinion of the Assessing Officer satisfactory may be charged to income tax as the income of the taxpayer.*
>
> *In the instant case, as the assessee has failed to offer any explanation on the issue discussed above this is my considered opinion to treat the whole amount of Rs. 34,31,971/- as cash credit and as per the provision of Section 68 r.w.s 115BBE of the I.T. Act, 1961 and added to the total income."*

4. The assessee carried the matter before the learned CIT(A) wherein also the assessee failed to substantiate its case and not furnished any documentary evidences and also failed in proving the genuineness of the transaction by adducing justified explanation and hence the learned CIT(A) dismissed the appeal by passing ex-parte order. The concluding findings of the learned CIT(A) are extracted below for ready reference:-

> *"Thus it was imperative on the appellant assessee to prove genuineness of the transaction. In this case the appellant assessee has failed to substantiate the claim. The appellant assessee during assessment proceedings has also failed*

to submit any details/ documentary evidences in support of its claim. However, during the appellate proceedings, the appellant assessee has furnished the reply which have been considered but not found tenable as the appellant has not furnished any documentary evidences to substantiate its claim except a written submission. Having failed to discharge its onus and explain the source of transactions. It should be added u/s 68 as undisclosed income of the appellant assessee. The addition made by the AO is justified and the grounds of appeal are dismissed."

5. Before us, during the course of haring, learned Counsel, Shri Thakkar, appearing for the assessee admitting the lapse on the part of the assessee for not responding to the explanation sought by the authorities below. However, he pleaded that if this Court grants the assessee one opportunity by restoring this appeal to the file of the learned CIT(A), so that the assessee is able to substantiate its case before the first appellate authority. Therefore, he prayed that the appeal be restored to the file of the learned CIT(A).

6. On the other hand, the learned D.R. submitted that despite the learned CIT(A) provided sufficient opportunities to the assessee, however, the assessee did not appear before the learned CIT(A) and not furnished relevant details. He strongly supported the orders passed by the learned CIT(A).

7. I have heard both the learned Counsel appearing for the parties, perused the materials available on record and gone through orders of the authorities below. I find that though the learned CIT(A) granted opportunities to the assessee to substantiate its case, ultimately, the order passed by him is an ex-parte order. Therefore, I am of the opinion that by following the principles of natural justice, one opportunity should be given to the assessee to substantiate the case before the learned CIT(A). In view of the above, the impugned order passed by the learned CIT(A) is set aside and remit the back

matter to the file of the learned CIT(A) and direct him to adjudicate the matter afresh on merit and in accordance with law after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

8. In the result, assessee's appeal stands allowed, but for statistical purpose only.

Order pronounced in the open Court on 25/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 25/02/2025

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur