

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.398/DEL/2020

[Assessment Year: 2015-16]

G-Trans Logistics (India) Pvt. Ltd. 1201, Arihant Altura, Plot No.GH-03, Abhay Khand-II, Indirapuram, Ghaziabad, Uttar Pradesh-201010	Vs	Income Tax Officer, Ward-1(2), CGO Complex,-1, Hapur Chungi, Ghaziabad Uttar Pradesh-201001
PAN- AAFCG3705Q		
Assessee		Revenue

Assessee by	Sh. Prateek Gupta, CA & Sh. Satyajeet Goel, CA
Revenue by	Sh. Yogesh Kumar Nayyar, Sr. DR

Date of Hearing	03.11.2022
Date of Pronouncement	09.11.2022

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A), Ghaziabad, dated 10.10.2019 pertaining to Assessment Year 2015-16

2. Grounds of appeal read as under:-

“1. The Grounds of appeal are enumerated hereunder, which are without prejudice to one- another

01. That on the facts and in the circumstances of the case and in law, the Ld. CIT-A erred in disposing-of the appeal Ex-Parte in limini, without granting any opportunity of being heard, by treating the appeal as non-est on a purported premise that appeal reportedly suffers from non-curable defect (whereas there exists no such defect), which action being unlawful, unwarranted, unjustified, based on misconception and also against the principle of natural justice, is liable to be quashed and thereby the under reference appeal warrants admission.

02. That on the facts and in the circumstances of the case and in law, the Id. Assessing Officer erred in making impugned additions of Rs.14914040 in most mechanical and arbitrary manner, which are unlawful, imaginary, unwarranted, absolutely without any basis, perverse and based on mere surmises, suppositions and conjectures and that various observations made by him in order are either incorrect, irrelevant or untenable and has no applicability to this case and thus impugned order is liable to be quashed and returned income deserves to be accepted.

03. That on the facts and in the circumstances of the case and in law, the Id. AO was not justified in making adhoc additions of Rs. 445820 by applying net profit ratio of preceding year in mechanical manner without any iota of any adverse findings or pointing out any discrepancies, and thus the same is without any basis, unlawful, unwarranted and is liable to be deleted.

04. That on the facts and in the circumstances of the case and in law, the impugned action of Id. AO of making additions aggregating to Rs. 14468220 under section 68 is absolutely arbitrary, unlawful, unwarranted, perverse, bad in law and against the settled tenets of law and rudimentary principles of contemporary jurisprudence, which is made in most mechanical manner without any adverse findings and ignoring the fact that the assessee has discharged its onus laid on it by law under section 68 and that the facts and circumstances of the case do not warrant to make any such impugned additions and the same are liable to be deleted.

05. That on the facts and in the circumstances of the case and in law, the impugned action of Id. AO of making additions aggregating to Rs. 14468220 under section 68 is legally untenable; as he himself estimated the total income of the assessee by invoking section 145(3) and thus such additions u/s 68 being based on books of account are absolutely unlawful, perverse, legally untenable, bad in law and against the settled tenets of law and against the rudimentary principles of contemporary jurisprudence and the same are liable to be deleted on this ground too.

06. That on the facts and in the circumstances of the case and in law, the Id. AO erred in making double additions of same amount of Rs. 3543185/- under section 68, once in the individual name of proprietor Pallavi Chaturvedi and again in the name of her proprietorship firm, which at any rate without prejudice, is arbitrary, incorrect, unlawful, unwarranted, perverse, bad in law and is liable to be deleted.

7. That all the above grounds are independent grounds, which are without prejudice to one another.

8. *The interest as levied by the Id. AO under section 234B is unwarranted as the same is levied without any direction, discussion or pointing out the facts and circumstances of the case which entailed levy of such interest as per the law and the same therefore is liable to be omitted.”*

3. Brief facts of the case are that in this case Assessing Officer vide order dated 29.12.2017 passed an order u/s 143(3) making an addition of Rs.144,68,220/-.

4. Assessee appealed before the Ld. CIT(A).

5. The Ld. CIT(A) dismissed the appeal just on the ground that in Form No.35, the section of assessment order mentioned is 144 instead of 143(3). In his opinion of Ld. CIT(A) this is an incurable defect. Ld. CIT(A) has not specified under which law, it is an incurable defect. On query in this regard, the Ld. DR has shown his inability to refer to any laws in this regard.

6. Be as it may in our considered opinion, when interest of substantial justice is pitted against technicalities, it is always justice that prevails. Accordingly, we remit this issue to the file of the Ld. CIT(A) to consider the issue and pass an order on the merits of this case after giving assessee the proper and requisite opportunity. The Ld. Counsel of the assessee has also undertaken to cooperate with the Ld. CIT(A).

7. In the result, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on 09th November, 2022.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER
Delhi: 09.11.2022.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi