

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCHES (CAMP AT MEERUT))**

**BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6607/Del./2018
(ASSESSMENT YEAR : 2010-11)**

Shri Haji Bhullan, vs. ITO, Ward 1 (3),
C/o Shri Vinod Kumar Goel, Meerut.
282, Boundry Road, Civil Lines,
Meerut.

(PAN : AIPPB9133J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vinod Kumar Goel, Advocate
REVENUE BY : Shri Yogesh Sharma, Senior DR

Date of Hearing : 11.01.2019

Date of Order : 24.01.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Shri Haji Bhullan (hereinafter referred to as 'the Assessee') by filing the present appeal, sought to set aside the impugned order dated 28.08.2018 passed by Ld. CIT (Appeals), Meerut qua the assessment year 2010-11 on the grounds inter alia that :-

"1. That the AO. was not justified to deny for not filing the income tax return by the assessee while the assessee has already filed the income tax return vide ack. no.1403001193 Dt. 2010-11 U/s 44AF.

2. The AO has not issued notice U/S 143(2) which is mandatory. The C.I.T (A) is not justified confirm the order U/s 144 of I.T. Act.

3. That an amount of Rs.17,51,800/- deposited in bank is related with the sales proceeds of the related assessment year and the same is confirmed by the assessee in the statement of income and the same filed with the relevant assessment year ITR. Therefore the Ld. AO. was not justified to impose a tax on the same amount without considering the facts of the case of C.I.T (A) is in error in providing past relief of income shown only.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer has framed the assessment in this case under section 144/147 of the Income-tax Act, 1961 (for short ‘the Act’) by making assessment on the ground that the assessee has failed to join the proceedings despite repeated notices and proceeded to make addition of Rs.17,51,800/- on account of unexplained deposits in the bank account.

3. Assessee carried the matter by way of an appeal before the ld. CIT (Appeals) who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The assessee has filed return u/s 44F of the Act declaring income of Rs.1,50,650/- but the AO proceeded on the wrong facts that the assessee has not filed return of income. It is also not in dispute that in the return, assessee has shown gross receipt from his two businesses, of which books are not maintained, namely, old motor parts and cloth business. However, the Id. CIT (A) has declined to accept the contention of the assessee that the bank deposits on the basis of which addition of Rs.17,51,800/- has been made cannot be correlated to the turnover shown in the return of income.

6. When the assessee has come up with categoric case that he has not maintained the regular books of account and has filed the return u/s 44AF, it is difficult to understand as to why the bank account maintained with ICICI Bank containing deposit of Rs.17,51,800/- is not to be correlated with the turn over. Moreover, when AO was having PAN of the assessee, which is duly recorded in the assessment order, it is beyond comprehension as to why the AO was not in the notice of filing the income-tax return of the assessee u/s 44AF. When it is the case of the assessee that he was having cash sales and deposited the same in the bank account regularly and he is in possession of evidences to explain the same, it is difficult to agree with Id. CIT (A) that bank account

cannot be correlated to the turnover shown in the return of income. So, the assessee is required to be given adequate opportunity of being heard to explain the same.

7. In view of what has been discussed above, we are of the considered view that the impugned order passed by the Id. CIT (A) is liable to be set aside and the file is ordered to be remanded to AO after providing an opportunity of being heard to the assessee. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 24th day of January, 2019.

**Sd/-
(N.S. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 24th day of January, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Meerut.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**