

**IN THE INCOME TAX APPELLATE TRIBUNAL JABALPUR
BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER

ITA No.3/JAB/2022

Assessment Year: 2016-2017

Shri Ved Prakash, Ramniwas, Ward-1, Khandawa, Bhuana, Jhunjhunun, Rajasthan [PAN: AOGPP 9344E]	vs.	Income Tax Officer, Ward-1(2), Jabalpur
(Appellant)		(Respondent)

Appellant by	Shri Ajit Pati, Advocate
Respondent by	Shri S.K. Halder, Sr. DR
Date of hearing	27/01/2022
Date of pronouncement	28/01/2022

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order under section 250(6) of the Income Tax Act, 1961 ('the Act') dated 22/11/2021 by the Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' for short), dismissing the assessee's appeal contesting his assessment u/s. 143 (3) of the Act dated 10/12/2018 for the assessment year (AY) 2016-17.

2. At the outset, it was submitted by Sh. Pai, the Id. counsel for the assessee, that the impugned order is an *ex parte* order, so that it has been passed without hearing the assessee. On being asked the reason for the same; the impugned order stating of four notices of hearing having been issued and served on the assessee, none of which stood complied with, with the assessee not even seeking an adjournment, he, adverting to Ground 2 of the Grounds of Appeal, fairly conceded to it being on account of a lapse on the part of the assessee, an ex-military man, to

access his email inbox, so that he was unaware of each of the notices of hearing issued by the first appellate authority. On merits, he would submit that the assessee's son, Sh. Ankit Kumar, also a military personnel, had gifted him ₹. 2.10 lacs (per cheques) during the year. The assessee, who runs a Mother Diary milk booth in South Delhi, thus had a cash surplus to that extent – the booth sales being in cash, which was deposited in his bank account along with some of his current year's commission income from Mother Diary (₹. 20,000), and which explains the cash deposit of ₹. 2,30,000 in his bank account, which though has been added in assessment as unexplained. The matter, it was pleaded, be therefore restored to the file of the Id. CIT(A) to enable proper adjudication and in the interest of justice. Sh. Halder, the Id. Sr. DR, did not raise any objection to the said proposition.

3. I have heard the parties, and perused the material on record.

3.1 My first observation in the matter is that it is unfortunate that such trivial matters should travel to and engage the Tribunal and, more importantly, for want of proper representation by or on behalf of the assessee, constraining the Revenue authorities to draw an adverse inference. The assessee, to begin with, filed his return of income for the relevant year belatedly. Notice u/s. 143(2) (dated 21.8.2018), which was served both through email as well as by post, as also the notice u/s. 142(1) dated 12.10.2018, were not complied with. The information called for during assessment proceedings was not furnished and, finally, the assessee did not avail any of the four opportunities granted by the first appellate authority. He might, as sought to be explained by the Id. counsel during hearing, have a clear cut case, but the same nevertheless needs to be brought out and properly evidenced for the Revenue authorities to take cognizance thereof. As I see it, cash stands deposited in the current account with SBI (a/c number 20041737627), while the stated cash surplus would stand to arise in his other bank account (# 33786833692), as both the sale proceeds as well as, as explained, the sum gifted by his son, were deposited in the latter account. A transfer of funds from one bank account to another, either directly or by withdrawing cash from one and

depositing it in the other, would therefore be required to be shown to substantiate the assessee's explanation, which may also involve his third bank account (# 61150258012) with SBBJ, copy of which was also not furnished despite being called per notice u/s. 133(6), resulting in the matter being not properly addressed.

3.2 Under the circumstances, it is only appropriate that the matter is restored back to the file of the assessing authority for an adjudication afresh after hearing the assessee, who has, as afore-noticed, exhibited a disregard for his statutory obligations, both at the assessment and the first appellate stage. This results in an unnecessary and wholly avoidable load on the administrative machinery, besides delaying the resolution of issues/matters and frustrating the process of law. I, therefore, even as observed during hearing, consider it proper to levy a nominal cost of ₹.2500 (INR two thousand five hundred) on the assessee, to be deposited with the Prime Minister's National Relief Fund. Subject, therefore, to the discharge of the said cost, the impugned assessment is set-aside. The Assessing Officer shall adjudicate afresh after giving the assessee – who has (through his counsel) assured of proper cooperation in the proceedings, a reasonable opportunity of hearing, in accordance with law, and by issuing definite findings of fact, within a reasonable time and, in any case, observing the time frame under law.

3.3 I decide accordingly.

4. In the result, the assessee's appeal is allowed for statistical purposes on the aforesaid terms.

Order pronounced in the open court on January 28, 2022

Sd/-
(SanjayArora)
Accountant Member

Dated: 28/01/2022

Copy of the order forwarded to:

1. The Appellant: Shri Ved Prakash, Ramniwas, Ward-1, Khandawa, Bhuana, Jhunjhunun, Rajasthan 333502
2. The Respondent: Income Tax Officer Ward-1(2), Jabalpur
3. The Pr. CIT-1, Jabalpur

4. The CIT (Appeals), National Faceless Appeal Centre, Delhi
5. The Sr. DR, ITAT, Jabalpur
6. Guard File

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