

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND  
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.100/Lkw/2021  
A.Y. 2017-18

Sparsh Anil, Main Road, Polic Kotwali Lakhimpur, Lakhimpur Kheri U.P. 262701  PAN : AIVPA9977F  (Appellant)	Vs.	The Income Tax Officer, Range-3(5), Lakhimpur-2    (Respondent)
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Appellant by	Shri Shubham Rastogi, CA
Respondent by	Shri Pankaj Sachan, DR
Date of hearing	30/05/2022
Date of pronouncement	03/06/2022

**ORDER**

**PER: T.S. KAPOOR, A.M.**

This is an appeal filed by the assessee against the order of Id. CIT(A) dated 25/08/2021. In this appeal the assessee has taken the following grounds:

- “(1) *The Id. C.I.T. (A) NFAC, fails to appreciate that there was a reasonable cause for not making compliance of the notices issued by Ld. A.O. through e-portal during assessment proceeding as the then C.A. of the Assessee was busy in treatment of his wife, suffering from Cancer who later on died. Due to this reason, he could not see the emails and assessee was not aware about the notices and non compliance by assessee's CA.*
- (2) *The Ld. C.I.T.(A) dismisses the submissions made without allowing an opportunity to submit supporting documents and to the objections to explain, inspite of the fact specific request has been made for the same. Thus, without allowing an opportunity deciding the appeal against the assessee is contrary to the natural justice.*
- (3) *The Ld. C.I.T. (A) arbitrarily held that no agriculture income has been shown in the Income Tax Return without going through the*

*submissions and copy of Income Tax Return filed. Similarly, dismissing the gift received from Father in law in cash without allowing an opportunity, inspite of specific request in this regard.*

- (4) *Ld. C.I.T. (A) and Ld. A.O. erred on facts and in law in confirming the addition of Rs. 44,27,000/- u/s 69A r. w. s. 115BBE of I.T. Act being Cash deposited in Bank during demonetization period without appreciating that cash was available as out of his past saving as accumulated brought forward Cash in hand, cash income during the year, cash withdrawal from bank and cash gifts received from blood relations during the year.*
- (5) *That Assessee is an old tax payer and regularly filing his income tax return. During the year, Revised Return has been filed at a gross income of Rs.10,30,800/- and Net Agriculture Income of Rs. 54,550/- .Cash was deposited out of earlier year saving as well as out of current year income and withdrawal from bank and cash gift received.*
- (6) *The addition upheld is highly excessive, contrary to the facts, law and principle of natural justice and without providing the sufficient time and opportunity to have its say on the reasons relied upon by Ld. A.O.”*

2. Aggrieved with orders of lower authorities, the assessee has preferred this appeal before the Tribunal with the submission that the Assessing Officer has completed the assessment ex-parte without allowing an opportunity of being heard to the assessee. Ld. counsel for the assessee submitted that there was a reasonable cause for not making compliance of the notices issued by the Assessing Officer through e-portal as the then CA of the assessee who was busy in the treatment of his wife, who was suffering from cancer and who later died. He submitted that due to this reason C.A. could not see the emails of the assessee. As regards the order of Id. CIT(A), the Id. AR submitted that Id. CIT(A) has rejected the arguments of the assessee without confronting the assessee and assessee could not file the necessary evidences. Under these facts and circumstances, it was requested that the matter may be remitted back to the file of the Assessing Officer to decide the

issue afresh as the order by the Assessing Officer has also been passed under Section 144 of the Act.

3. We have heard the rival parties and have gone through the material placed on record. We are of the view that the matter requires reconsideration at the level of the Assessing Officer as the Assessing Officer has passed the orders u/s. 144 of the Act as the assessee could not appear before him as the CA of the assessee was not able to go through the emails of the department due to illness of his wife. The Id. CIT(A) has dismissed the appeal of the assessee by not agreeing to the submissions of the assessee and assessee was also not given proper opportunity to submit evidences in support of his submissions. Under these circumstances, we feel that one more opportunity should be given to the assessee by the Assessing Officer as he has completed the assessment ex-parte. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the Assessing Officer with the direction that the he shall refix the hearing of the case and decide the case afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by Assessing Officer and not to seek undue adjournment and co-operate with Assessing Officer in framing the fresh assessment.

4. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 03/06/2022)

Sd/-  
**(A.D. Jain)**  
**Vice President**

Sd/-  
**T.S. Kapoor**  
**Accountant Member**

Aks -  
Dtd. 03/06/2022

*Copy of order forwarded to:*

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|--|---------------------------|
| <i>(1) The appellant</i>               | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i>                | <i>(4) CIT(A)</i>         |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i>     |

By order

Assistant Registrar