

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2708/DEL/2022
[Assessment Year: 2012-13]

Gaurav Rastogi, legal heir of Late Smt. Asha Rastogi (Deceased) 16, Bodhi Marg, DLF, Phase-1, Gurgaon-122002 PAN- AARPR2306M	<u>Vs</u>	Income-tax Officer, Ward-1(5), Gurgaon
APPELLANT		RESPONDENT
Assessee represented by	Shri Ashwani Kumar, FCA	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	23.02.2023	
Date of pronouncement	27.02.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National faceless Appeal Centre (NFAC), Delhi, dated 20.09.2022, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. That the order dated 20/09/2022 passed u/s 250 of the Income-tax Act, 1961 hereinafter called “the Act”) passed by the National Faceless Appeal Centre (NFAC)- Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Income Tax Officer, Ward-1 (5), Gurgaon in making addition of Rs. ‘4,39,500/- in respect of cash deposited into bank account.

2. That the order dated 20.09.2022 passed u/s 250 of the Income-tax Act, 1961 hereinafter called “the Act”) passed by the National Faceless Appeal Centre (NFAC)- Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer by ignoring the fact that the appellant has explained the sources of cash deposited during the course of assessment proceedings to the Ld. Assessing officer. The assessee has deposited cash of Rs. 14,39,500/- out of following sources:-

Rs. 4.00 lacs	Out of cash withdraw from bank
Rs 5.00 lacs	Out of business receipts/revenue
<u>Rs. 5.00 lacs</u>	Out of opening Balance
Rs.14.00 lacs	Total.

2. At the outset learned counsel for the assessee submitted that the orders of the authorities below have been passed in gross violation of principles of natural justice. The assessee was not provided adequate opportunity to represent his case. He submitted that before the learned CIT(Appeals) there was no representation on behalf of the assessee owing to the Covid-19 infection and death of Smt. Asha Rastogi.

3. On the other hand, learned DR supported the orders of the authorities below.

4. I have heard rival submissions and perused the material available on record.

I find that the learned CIT(Appeals) has dismissed the appeal by observing as under:

“10.5 During the course of the appeal proceedings, the following details were called.

You were requested to furnish the following information as sought vide earlier notice u/s.250 of the Act dated 12.03.2021, 10.04.2021, 27.05.2021, 28.07.2021, 06.09.2021, 28.07.2022 & 17.08.2022 to facilitate the disposal of your appeal.

- 1. Written submission and support of the grounds of appeal.*
- 2. Copies of letters furnished to the Assessing Officer during the assessment proceedings and copies of all evidences furnished to him.*
- 3. Copy of the Bank account statement.*
- 4. Copy of the Return of Income filed in response to notice u/s. 148.*
- 5. Copy of the Return of Income filed for the earlier assessment year 2011-12.*

10.6. However, despite issue of several notices and reminders on 23.01.2021, 12.03.2021 and reminders on 10.04.2021, 27.05.2021, 28.07.2022, 17.08.2022 and final reminder on 01.09.2022 and these were delivered to the designated e-mail of the appellant, no written submissions or any documentary evidences were submitted by the appellant.

10.7 Though in the statement of facts the appellant submits that “it is clear case of deposit cash of already having in hand”, the submissions made in the statement of facts by the appellant have not be backed by the appellant by submissions or documentary evidences. Hence, they are rejected.

11. In view of the above, I do not have any reason to interfere in the addition made by the Assessing Officer in the order u/s 143(3) r.w.s. 147 dated 16.12.2019.

*12. Therefore, the addition made in the Assessment order in this regard is **sustained** Accordingly, ground of appeal is **dismissed.**”*

5. Considering the submissions of the learned counsel for the assessee and the fact that the assessee is legal heir of Smt. Asha Rastogi (deceased), therefore, I am of the considered view that there was a reasonable cause for non-representation

before the learned CIT(Appeals). Hence, the impugned order is hereby set aside and to sub-serve the interest of natural justice the issue is restored to the file of the Assessing Officer for making the assessment afresh after affording adequate opportunity to the assessee. The assessee is also directed not to seek adjournment without any exigency. Grounds are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 27th February, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI