

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.230/Asr/2022
Assessment Year: 2011-12**

Sh. Allah Rakha, VPO Meen Sarker Post Office Bari Brahmana, Jammu. [PAN: AUGPR1974G] (Appellant)	Vs.	Income Tax Officer, Kathua. (Respondent)
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Appellant by	Sh. Joginder Singh, CA.
Respondent by	Sh. S.M. Surendra Nath Sr.DR

Date of Hearing	27.02.2023
Date of Pronouncement	15.03.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal was filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi, [in brevity the CIT(A)]order passed u/s 250of the Income Tax Act 1961, [in brevity the Act] for A.Y.2011-12. The impugned order was emanated from the order of Id. ITO, Ward-1(5), Samba, order passed u/s 143(3)/147 of the Act on dated 27.12.2018.

The assessee has raised the following grounds which are read as under:

- “1. That the Learned CIT (A) National Faceless Appeal Centre (NFAC) Delhi erred in passing the order Under section 250 of the Income tax Act, 1961 merely on assumptions, presumptions and apprehensions, without appreciating the factual, legal and statutory position of the Law and facts of the case.*
- 2. That the Learned CIT (A), National Faceless Appeal Centre (NFAC) Delhi has erred both in law as well as on facts by dismissing the appeal of the Appellant unheard and without any concrete reasons in exparte manner.*
- 3. That the learned CIT(A), National Faceless Appeal Centre (NFAC) Delhi has erred in law in holding that the appellant has failed to offer any explanation about the nature and source of the cash deposits and other credits amounting to Rs.59,90,000/- in saving bank accounts maintained by the assessee.*
- 4. The appellant craves leave to add, amend, alter or otherwise raise any other ground of appeal.”*

2. Assessee has filed an application for condonation of delay of 138 days wherein, assessee has stated that delay due to ignorance about the faceless system and was not aware about the service of the order in the portal. After receiving the demand notice from the department, the assessee came to know about the appeal order. The delay for 138 days for filing the appeal before the ITAT is prayed for condone. The ld. Sr. DR has not made any strong objection against the condonation of delay. Therefore, the delay of 138 days is condoned& file is taken for adjudication.

3. Brief fact of the case is that the assessee's case was reopened u/s 148 for depositing cash in J & K Bank amount to Rs.57,40,000/-. After assessment, the total addition was made to Rs.59,90,000/- u/s 68 of the Act for depositing cash in bank account of the assessee. As per the ld. AO the assessee was not able to substantiate its claim and unable to substantiate the reason for depositing the cash in the bank account. The assessment was framed by addition amount of Rs. 59,90,000/-. Being aggrieved, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) has passed the *exparte* order for non submission of documents during hearing. Being aggrieved assessee filed an appeal before us.

4. We heard the rival submission and considered the orders of the revenue authorities. The ld. Sr. DR first pointed out the specific para 7.5 of the ld. CIT(A) order which is reproduced as under:

“7.2 During the appellate proceedings, the appellant was provided many opportunities as enumerated above. The appellant, for the reasons best known to him has remained non-compliant. No material facts have been brought on record to rebut the finding of the AO. There remains no doubt that statute has cast upon the appellant duty to explain the nature and source of cash deposits and other credits for the assessment year under consideration but in the instant case appellant has failed to discharge the above onus. In the statement of fact simply by saying that the assessee has sold agriculture land and the cash deposited is an agriculture income which is exempt income under the Act, is not sufficient to establish the case of the appellant.

7.3 Considering the above factual matrix of the case I am of the considered view despite being given ample opportunities during assessment and appellate proceedings, failed to offer any, explanation about the nature and source of the cash deposit and other credits amounting to Rs.59,90,000/- in saving bank account. Accordingly, the addition of Rs.59,90,000/- is confirmed. Hence, this ground of appeal taken by the appellant is dismissed.”

4.1 The Id. Counsel for the assessee prayed for a reasonable opportunity for submitting the documents and substantiates the claim. In fact, that the assessee was unable to submit the documents before the Id. CIT(A). The assessee claimed that the assessee is running a business. So, the entire cash deposited in the bank account is generated from the cash sale. The assessee deposited cash Rs.37,40,000/- in the saving bank account no 1205040100001609 maintained in J & K Bank Ltd. Branch Nar Singh Dev, Birpur, Jammu and depositing cash amount to Rs.21,50,000/- in J & K bank bearing a/c no.1217040100000520 which works out total amount of Rs. 58,90,000/-. But the revenue wrongly mentioned the amount Rs. 59,90,000/-.

5. In our considered view, we find that the assessee has a reasonable point for substantiated its claim for depositing the cash in bank account of the assessee. Further the Id. CIT(A) has passed the order without considering the ground of the assessee and not made any comment on the fact. The summation of cash deposit in two bank accounts is wrong. In our considered view, we remit back the matter to the Id. CIT(A)

for further adjudication *denovo*. The assessee is also directed to cooperate with the revenue in the set aside proceeding. Needless to say, the assessee should get a reasonable opportunity of hearing in the set aside proceeding.

6. In the result, the appeal of the assessee bearing **ITA No.230/Asr/2022** is allowed for statistical purposes.

Order pronounced in the open court on 15.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order