

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT 'SMC' BENCH, VARANASI**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 17/VNS/2023
Assessment Year: 2017-18

Mr. Sunil Kumar S/o Mr. Dharmanath Prasad, near Moti Mahal, Loha Patti, Ballia-277001,U.P.	v.	Income Tax Officer, 3(5), Ballia-277001,U.P.
PAN:BBTPK3948N		
(Appellant)		(Respondent)

Assesseeby:	None (application)
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	12.04.2023
Date of pronouncement:	12.04.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by the assessee, arising out of the appellate order passed by learned CIT(A),NFAC, New Delhi(DIN & Order No.:ITBA/NFAC/S/250/2022-23/1048599024(1)), dated 10.01.2023 for the assessment year 2017-18 u/s 250 of the Income-tax Act,1961(hereinafter called "the Act"), which appeal filed before ld. CIT(A) in turn has arisen out of the assessment order dated 29.11.2019(Order No. ITBA/AST/S/144/2019-20/1021359312(1)) passed by learned Assessing Officer (hereinafter called "the AO") u/s 144 of the 1961 Act.

2. The assessee has raised following grounds of appeal in memo of appeal filed with the Income Tax Appellate Tribunal, Circuit Bench, Varanasi, U.P. (hereinafter called "the tribunal") :-

1. *Because the learned CIT(A) has erred in law as well as on facts confirming a high-pitched order passed ex-parte u/s.144 in case of a*

petty village textile trader without appreciating the correct facts of the case and the situation of the assessee clarified in writing personally by him by appearance before the learned AO.

2. *Because the learned CIT(A) has erred in law as well as on facts in passing ex- parte orders u/s.144 illegally without appreciating the case on merits duly explained through the statement of facts and the submissions made during the assessment proceedings.*
3. *Because the learned CIT(A) has failed to appreciate that the AO has erred in law as well as on facts in misappreciating the entries in the bank accounts, FDR maturity proceeds, payments from maturity of Insurance policies for making the high-pitched assessment.*
4. *Because the learned CIT(A) has failed to appreciate that the AO has erred in law as well as on facts in taking peak credit of bank account in HDFC bank as business income without caring to take the aggregate of all credits in the assessee's two bank accounts as business turnover and applying the statutory provisions of section 44AD to determine correct business income as per law.*
5. *Because the learned CIT(A) has failed to appreciate that the AO has erred in law as well as on facts in making addition of Rs 2,25,480/- as alleged Interest and Rs.10,32,500/- as alleged cash deposited during demonetization period which is factually incorrect, misleading and without appreciating that the deposit represented business receipts, insurance receipts and maturity of FDRs."*

3. The brief facts of the case are that the assessee did not file his return of income for the impugned assessment year. Notice dated 13.03.2018 under section 142(1) was issued by the Assessing Officer to the assessee to file the return of income on or before 31.03.2018, but the assessee did not comply with the said notice and no return of income was filed by the assessee. As per information with the department, there was a cash deposit of Rs. 2,20,200/- and Rs. 8,12,500/- by the assessee during the demonetization period in his bank account's no. 353802010020125 with Union Bank of India, Ballia and bank account no. 1885193000141 with HDFC Bank, Ballia, respectively. The AO issued fresh notice u/s 142(1) along with questionnaire, dated 06.08.2019, which was claimed by the AO to have been duly served on the assessee. The assessee was asked to explain the sources of cash deposits of Rs. 10,32,700/- in his bank accounts during demonetization period. The assessee did not comply with the aforesaid notice

issued by the AO. Thereafter, AO issued notice u/s 144 of the 1961 Act , dated 29.08.2019 , which was also claimed by AO to have been duly served on the assessee, but again there was no compliance on the part of the assessee. Thereafter, the AO sought directions u/s 144A from JCIT , which was granted vide letter dated 03.09.2019. The AO issued fresh SCN dated 26.11.2019 , to which assessee replied that after long illness his wife had departed, and he encashed FDR's which were in her name. The amount was kept for education of his children's, but in the meantime demonetization started and he was forced to deposit the sum in bank account. The assessee further submitted that he availed loan from PMRY and in that account he has deposited Rs. 2,40,000/-. The assessee has also earned interest income of Rs. 2,25,480/- , which was not declared as no return of income was filed. Since the assessee did not file any return of income, the AO made additions to the tune of Rs. 1032,500/- towards cash deposits during demonetization period as well interest income to the tune of Rs. 2,25,480/- .

4. The assessee being aggrieved filed first appeal with learned CIT(A) , and learned CIT(A) issued notices dated 9th August, 2022, 13th December, 2022, 22nd December, 2022 and final opportunity was granted by Id. CIT(A) on 4th January, 2023 , but the assessee did not comply with any of the aforesaid notices. The Id. CIT(A) based upon the statement of fact , dismissed the appeal of the assessee, by holding as under:-

“4.3 During the appellate proceedings, the appellant has only submitted submission in the form of ‘Statement of Facts’. After that neither he has replied to hearing notices nor submitted any documentary evidence / information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicated at page no 1 and 2, para 3. No reply whatsoever has been submitted by the appellant. Even the assessment was completed under Section 144 of the Income Tax Act, 1961 due to non-compliance on the part of the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”

5. Aggrieved, the assessee has filed an appeal with the Tribunal. When these appeal was called for hearing, none appeared on behalf of the assessee although adjournment application was filed by the assessee. On perusal of the case record and after hearing ld. Sr. DR, it is observed that learned CIT(A) has passed an order wherein he has not decided the issue's on merits and has merely dismissed the appeal of the assessee without giving any of his own reasoning in dismissing the appeal of the assessee which is in violation of Section 250(6) of the Act. The Learned Sr. DR fairly submitted that the matter can be restored back to the file of learned CIT(A) for fresh adjudication on merit. So after considering the entire material on record, we have observed that the assessee did not file his return of income for the impugned assessment year. Notice dated 13.03.2018 under section 142(1) was issued by the Assessing Officer to the assessee to file the return of income on or before 31.03.2018, but the assessee did not comply with the said notice and no return of income was filed by the assessee. As per information with the department, there was a cash deposit of Rs. 2,20,200/- and Rs. 8,12,500/- by the assessee during the demonetization period in his bank account's no. 353802010020125 with Union Bank of India, Ballia and bank account no. 1885193000141 with HDFC Bank, Ballia, respectively. The AO issued fresh notices u/s 142(1) as well SCN's but satisfactory reply was not given, which led to additions being made by the AO to the tune of Rs. 1032,500/- towards cash deposits during demonetization period as well interest income to the tune of Rs. 2,25,480/-. The Assessing Officer framed the assessment under section 144 of the Act wherein the additions were made to the tune of Rs. 10,32,500/- on account of unexplained money deposited in the bank during the course of demonetization period as well interest income of Rs. 2,25,480/-. We have observed that the learned CIT(A) passed an *ex parte* order because the assessee did not file any reply before the CIT(A) and did not file any submissions before ld. CIT(A). The learned CIT(A) although referred to the statement of fact filed by the

assessee but has not given any independent findings/reasoning of his own. The reasoning is cardinal in the robust judicial delivery system, in arriving at decision which opens the mind of the adjudicator as to what weighed in his mind while deciding the appeal, as the appellate orders of the ld. CIT(A) are subject to challenge before the Tribunal, and hence ld. CIT(A) is required to give his own reasoning in arriving at the decision, which in the instant case the learned CIT(A) has not given his own reasoning which is in violation of section 250(6), and thus in our considered view, the appellate order passed by ld. CIT(A) cannot be sustained and matter need to be restored back to the file of the learned CIT(A) for fresh adjudication on merits, in accordance with law. The assessee is directed to appear before ld. CIT(A) and file all his explanation / submissions on merits. The learned CIT(A) shall give proper and adequate opportunity of being heard to the assessee and the Assessing Officer, in accordance with the principles of natural justice. The appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 12/04/2023 at Varanasi, U.P. and reduced to writing and signed on 13.04.2023

Sd/-
[PAVAN KUMAR GADALE]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED:13/04/2023

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Copy forwarded to:

1. Appellant –Sunil Kumar S/o Dharmanath Prasad, near Moti Mahal, Loha Patti, Ballia, U.P.
2. Respondent –Income Tax Officer, 3(5), Ballia, U.P.
3. The ld. Sr. DR, ITAT, Varanasi, U.P.
4. The CIT, Varanasi, U.P.
5. The Guard File