

**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.7/Asr/2023  
Assessment Year: 2017-18**

M/s General Fruit Traders Shop No. 19 New Fruit Complex Narwal,Jammu. [PAN:AAMFG7644L] <b>(Appellant)</b>	Vs.	Income Tax Officer, Ward-1(1), Jammu.  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Gourav Arora, Adv.
<b>Respondent by</b>	Dr.Vedanshu Tripathi, Sr. DR

<b>Date of Hearing</b>	22.05.2023
<b>Date of Pronouncement</b>	26.05.2023

**ORDER**

**Per:Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed 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.

2017-18. The impugned order was emanated from the order of the Id. Income Tax Officer, Ward 1(1), Jammu[in brevity 'AO'] order passed u/s 144 of the Act.

2. The appeal of the assessee was filed with delay of 79 days. The assessee filed a condonation petition. The concern advocate was occupied for the illness of his wife. The medical report was duly annexed and petition an affidavit. The Id. DR had not made any objection for condonation of delay. Accordingly, the delay of 79 days is condoned.

3. The assessee has taken the following ground:

*“1. That the order under appeal is against the law and facts of the case.*

*2. That on the facts and circumstances of the case the Ld. CIT(A) has not been justified in confirming the assessment order passed by the Assessing Officer.*

*3. That on the facts and circumstances of the case the Ld. CIT(A) has also erred in law in not deciding the appeal of the appellant on merits.*

*4. That the Ld. CIT(A) has also made the violation of principle of natural justice while*

*deciding the appeal of the appellant as only two opportunities have been given to the appellant. It is the law of the land that reasonable opportunities have to be given for deciding the appeal case.*

5. *It is prayed that the Hon'ble Tribunal may kindly be pleased to allow the appellant to amend or file additional/alternate grounds of appeal at the time of hearing."*

4. Brief fact of the case is that the assessee was assessed u/s 144 of the Act. The addition was made on basis of depositing cash during demonetisation amount of Rs.14,94,600/- and the ld. AO calculated net profit on the deposited cash amount of Rs.1,49,07,546/- @ 8% which is computed to Rs.11,92,603/- u/s 28 of the Act. Both amount of Rs.11,92,603/- and Rs.14,94,600/- works out total amount to Rs.26,87,203/- which was added back with the total income of the assessee. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) considered the said amount as unexplained source and passed the *ex parte* order. Being aggrieved assessee filed an appeal before us.

5. The ld. AR vehemently argued and placed that the assessee was denied for the reasonable opportunity before any of the authorities. During assessment proceeding, the entire Kashmir Valley was locked up due to insurgency and strike on the year 2019. So, the assessee was unable to represent the matter before the assessing authority. The ld. AR further represented that during appeal proceeding the assessee's consultant was fully busy for his wife illness. So, the assessee was not got proper opportunity to submit the documents.

6. The ld. DR argued and fully relied on the order of the revenue authorities.

7. We heard the rival submission and relied on the documents available in the record. The assessment was completed on basis of the deposit of cash in the bank account during pre and post demonetisation. The assessee is a fruit trader, as per ld. AR the entire cash was generated from the business of the assessee. The assessee was unable to submit the evidence before any of the authorities during appeal proceeding. The ld. DR had not made any strong objection against the ground of the assessee. After hearing both the parties and considering the issue involved, we set aside the order of the ld. AO. The appeal of the assessee is remitted back to the

ld. AO for further adjudication. Needless to say, the assessee should get reasonable opportunity for hearing in set aside proceeding.

8. In the result, the appeal of the assessee bearing **ITA No. 7/Asr/2023** is allowed for statistical purposes.

**Order pronounced in the open court on 26.05.2023**

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