

**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.200/Asr/2022
Assessment Year: 2016-17**

Sh. Abdul Hamid Khan, Firdousabad Batamaloo Srinagar UT J & K. [PAN:BPJPK9869N] (Appellant)	Vs.	ITO, Ward-1, Srinagar. (Respondent)
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Appellant by	Sh. Mohd. Iqbal Untoo, AR
Respondent by	Sh. S.M. Surendra Nath, Sr. DR

Date of Hearing	15.05.2023
Date of Pronouncement	18.05.2023

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.

2016-17. The assessment was framed by the Income Tax Officer, Ward-1, Srinagar [in brevity the 'AO'], order passed u/s 144 of the Act.

2. The assessee has filed an appeal with a delay of 8 days. The ld. AR of the assessee filed an affidavit for condonation of delay and clearly mentioned that the counsel was busy in filing of the audit report before the Department. So, the delay was made for 8 days. The minor delay of 8 days is duly condoned with the consent of the ld. DR. Accordingly the delay for 8 days is condoned.

3. Brief fact of the case is that the assessment was completed u/s 144 with addition amount of Rs.1,20,02,247/- for depositing cash in the bank account of the assessee. The entire amount was taken as unexplained /undisclosed source of income for the impugned assessment year and addition was made u/s 68 with a total income of the assessee. Being aggrieved the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO and passed *ex parte* order against the assessee. Being dissatisfied on the appeal order, the assessee has filed an appeal before us.

4. During hearing the ld. AR argued that in the 1st appeal the pandemic Covid-19 was going on. The respective counsel was infected and was unable to submit the documents before the authorities. The assessee is a wholesale trader of livestock,

chickens at Batmaloo, Srinagar. Such business is being carried on by assessee since long& having a shop in the same vicinity where he resides. The assessee originally filed its income tax return after getting its books of accounts duly audited u/s 44AB of the Act on dated 07.11.2017. The case was picked up for limited scrutiny under CASS for reasons on cash deposits. The source of cash deposit is well explained and it is originated from the business of the assessee. In both stage the assessee was unable to explain the source of the cash deposit which is violation of the natural justice.

5. The Id. DR fully relied on the order of both the revenue authorities and invited our attention in appeal order page 10 para 12 which is extracted as below:

“12. It appears that the details available in the return of income and in the audit report were sketchy. As a result, AO could not make estimate of income higher than the returned income if the facts so warranted. Coupled with this was the fact that there was zero response from the appellant-assessee for the assessment proceedings. Hence, AO resorted to treating the entire cash deposits as undisclosed income within the meaning of Section 68. Since the appellant has not made any meaningful compliance in this appeal proceedings, I have no material

submitted by the appellant to support the contrary claims made in the Statement of Facts and the Grounds of Appeal. In other words, the Grounds of Appeal and the Statement of Facts contain mere assertions without any support of evidence. In these circumstances, I have no option but to uphold the action of AO. Accordingly, the addition of Rs. 1,20,02,247/- is confirmed.”

6. We heard the rival submission and considered the documents available in the record. The assessee is a resident of Kashmir Valley. The assessee's appeal was in hearing during the pandemic of Covid. It is well explained that the assessee was running the business of live stock and the books of account are audited u/s 44AB of the Act which was duly filed before the revenue authorities. It is pertinent that the entire amount of cash is duly verified by the auditors of the assessee. Both the assessment and appeal were *ex parte* and assessee was denied to explain the source of cash deposit in the bank account. In our considered view, we remit back the matter to the Id. CIT(A) for further adjudication. Needless to say, the assessee should get a reasonable opportunity of being heard in set aside proceedings and should allow to submit the documents in favour of the argument.

7. In the result, the appeal of the assessee bearing ITA No. 200/Asr/2022 is allowed for statistical purposes.

Order pronounced in the open court on 18.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant 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.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order