

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

**(VIRTUAL COURT)**

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

**I.T.A. No. 134/Asr/2023**  
Assessment Year: 2009-10

Sh. Muzaffar Jan Pampori The Bund Near Masjid Hamz Amira Kadal, Srinagar 190001, Jammu & Kashmir [PAN: AOJPP 3773J] <b>(Appellant)</b>	<b>V.</b>	Income Tax Officer, Ward 3(2), Srinagar  <b>(Respondent)</b>
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Appellant by	Sh. Ishtiyaq Ahmad Wani, CA
Respondent by	Sh. Prashant Singh, Sr. DR

Date of Hearing	: 19.06.2023
Date of Pronouncement	: 22.06.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

This appeal has been filed by the assessee against the order of the  
Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated

03.03.2023 in respect of Assessment Year 2009-10 challenging therein the ex-parte orders passed by the authorities below in view of the principle of natural justice.

2. The appellant assessee has requested for condonation of short delay of 8 days. He has filed a condonation application which reads as under:

*“On 03/03/2023 I received the order of Commissioner (Appeals) National Faceless Appeal Centre, in my case for assessment year 2009-10. Being aggrieved by the said order I requested to one of the legal advisor, to prefer an appeal to the Hon'ble Appellate Tribunal. He undertook to do the needful after providing him the information /documents as required for filing of Appeal .Meanwhile my Wife got ill and she was in a very critical situation with whom I got busy. Soon after I got a little relief from her I went back for filing of appeal and I was late by 8 days. My affidavit detailing the aforesaid facts may kindly be placed before the Hon'ble Appellate Tribunal for condonation of the short delay in submission of the appeal.*

*I have already requested for condonation of delay in submission of appeal in my original Appeal along with Affidavit in support of the same.”*

2.1 Considering the reasonable cause, duly supported with the affidavit narrating the facts, the short delay of 8 days is hereby condoned. The appeal is admitted to be heard on merits.

3. At the outset, the Id. counsel for the assessee has submitted that the assessment order was passed u/s 144 of the Income Tax by the AO ex-parte qua the assessee without granting an adequate opportunity of being

heard and non service of show cause notice. He further submitted that the Id. CIT(A) has erred in confirming the action of the AO without appreciating the merits of the case ignoring the written submissions filed regarding explaining the source of deposits made through the credit card accounts were out of the business receipts. The counsel further stated that the Id. CIT(A) has decided the appeal by drawing adverse inference without granting opportunity of being heard. The Id. AR has contended that during the months of September, 2004 the business records of the assessee were destroyed in devastating floods in the Kashmir Valley. The counsel submitted that the transactions have been made through the banking channels for the payment in the credit card account which was used for carrying out business of Tour and Travel operator as evident from the transaction itself in the credit card account that reflects purchases of air tickets. It is evident from the TDS deducted by the vendors for whom the assessee has been registered as their ticketing agent. He pleaded that the assessee earned only commission income on the sale of tickets and the said income is duly declared in the return income. If he has granted an opportunity of being heard, we would demonstrate its claim with the supporting evidences before the AO in the denovo assessments proceedings. Accordingly, he requested that the matter may be remanded

back to the AO with the direction to grant proper opportunity of being heard to assessee, in view of the principle of natural justice.

4. Per contra, the Id. DR supported the order of the authorities below, however, he failed to rebut the contentions of the Id. AR.

5. We have heard the rival contentions, perused the material on record, and the impugned order. Admittedly, the AO has passed the assessment order ex-parte qua the assessee which has been confirmed by the Id. CIT(A) merely on the premise that furnishing the copies of bank statement and credit card statement without maintaining any books of account, balance-sheet and profit and loss account will not quantify the actual income of the assessee. Accordingly, the Id. CIT(A) hold that the assessee did not explain the source of the said credit payments and so, he confirmed the additions.

6. That the Id. AR has filed before the CIT(A) copies of the bank statement, credit card account and TDS deducted by vendors which has not been addressed by either of the authorities below. It is evident that the appellant is a registered Travel Agent who is running Travel Agency since 2006 under the Trade name of Prime Tour & Travels registered with the department of Tourism of the Government of J & K since 2006. The

authorities below ought to have been granted adequate opportunity of being heard to the appellant and rebutted his claim regarding the commission income earned out of the business of running Travelling Agency by way of booking tickets by the use of alleged credit card with current account in the HDFC Bank. In our view, the appellant assessee was engaged in buying the tickets by way of making payments through credit cards to the vendors and sold them to the customers and the proceeds generated from the sale of such tickets was being used to pay the credit card bills, a fact needs to be verified with reference to the TDS deducted by the vendors and the respective current and credit card bank accounts.

7. The Hon'ble Delhi High Court in the case of "Bharat Aluminium Company Ltd. vs. Union of India", (Supra) has held as under:

*"21. This Court is further of the view that a quasi-judicial body must normally grant a personal hearing as no assessee or litigant should get a feeling that he never got an opportunity or was deprived of an opportunity to clarify the doubts of the assessing officer/decision maker. After all confidence and faith of the public in the justness of the decision making process which has serious civil consequences is very important and that too in an authority/forum that is the first point of contact between the assessee and the Income-tax Department. The identity of the assessing officer can be hidden/protected while granting personal hearing by either creating a blank screen or by decreasing the pixel/density/resolution.*

*22. Consequently, this Court is of the view that the word "may" in Section 144B(viii) should be read as "must" or "shall" and requirement of giving an*

*assessee a reasonable opportunity of personal hearing is mandatory.*

*THE CLASSIFICATION MADE BY THE RESPONDENTS/REVENUE BY WAY OF A CIRCULAR DATED 23RD NOVEMBER, 2020 IS NOT LEGALLY SUSTAINABLE. AN ASSESSEE HAS A VESTED RIGHT TO PERSONAL HEARING AND THE SAME HAS TO BE GIVEN, IF AN ASSESSEE ASKS FOR IT.*

*23. The argument of the respondent/Revenue that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing. This Court is of the view that the classification made by the respondents/Revenue by way of the Circular dated 23rd November, 2020 is not legally sustainable as the classification between fact and law is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by Section 144B of the Act.*

*24. Also, if the argument of the respondent/Revenue is accepted, then this Court while hearing an appeal under section 260A (which only involves a substantial question of law) would not be obliged in law to grant a personal hearing to the counsel for the Revenue!*

*25. Consequently, this Court is of the opinion that an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. The right to personal hearing cannot depend upon the facts of each case."*

8. Under the facts and circumstances, we consider it deem fit to remand the matter back to the file of the AO to adjudicate the issue of source of cash deposits in the bank account of the appellant after granting adequate opportunity of being heard. The AO is further directed to issue a show cause notice to the assessee on the issue of cash deposits and thereafter passed a reasoned order in accordance with law, accordingly, the impugned order is set aside and the matter is remanded to the Assessing Authority to pass a denovo assessment order as per law.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 22.06.2023*

**Sd/-**

**(Anikesh Banerjee)  
Judicial Member**

**Sd/-**

**(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr./P.S.\**

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