

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

Ghulam Mohd. Sheikh Jammu &Kahsmir [PAN:-FETPS0233F] (Appellant)	Vs.	Income Tax Officer, Ward-1, Srinagar. (Respondent)
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Appellant by	Sh. Bashir Ahmed Lone, CA.
Respondent by	Sh. S.M. Surendra Nath, Sr. DR

Date of Hearing	17.07.2023
Date of Pronouncement	26.07.2023

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, Srinagar, (in brevity “the AO”) u/s 144 of the Act.

2. The assessee has taken the following grounds:

- “1. *The assessment is bad in law, as no notice u/s 142(1) of the Act stands served on appellant.*
2. *The Ld. CIT(A) erred in both facts & laws by confirming order of AO on the pretext, that business transaction in old currency notes were not allowed by Govt, during demonetization period.*
3. *The Ld. CIT(A) erred in both facts & laws by confirming addition of Rs 11,32,408.00 u/s 69A of the Act, when the same represents collection from sales made in the ordinary course of business & accounted in the books of accounts.*
4. *That the assessment is based on presumptions and conjectures and the AO has not acted fairly. _*
5. *That the appellant craved to amend, alter or add any ground of appeal before the same is heard and disposed of.”*

3. Brief fact of the case is that the assessee is the non-filer of Income Tax Return during the impugned assessment year. The notice u/s 142(1) was issued for calling the return of income within 30 days. But the assessee was failed to file any return during the time. The assessee is a trader of Kashmir Handicrafts and usually going outside valley in winter and sell his goods on street mostly in Lacho& Varanasi in U.P.. The assessee claimed that the assessee had not received any notice from the revenue u/s 142(1). The ld. AO frame the assessment u/s 144. The ld. AO added back the amount of Rs.11,32,408/- deposited cash during the

demonetisation in SBN from 09.11.2016 to 30.12.2016. The entire amount was added back with the total income of the assessee U/s 69A. For cash deposit in rest of the amount to Rs.9,24,504/- was duly considered as business income and calculated profit @ 8% u/s 44AD which works out the net profit amount to Rs.73,960/-. Both the amount of Rs.11,32,408/- and Rs.73,960/- which works out total amount to Rs.12,06,368/- added back with the total income of the assessee. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved, the assessee filed an appeal before us.

4. The Id. AR filed a written submission which is kept in the record. The Id. AR first placed that the notice u/s 142(1) was not received. The Id. AR explained that from the month of July 2019 to March 2020 the entire valley remained under communication blockage and the internet was withdrawn. The Id. AR further placed that the total sale of the assessee was Rs.20,53,740/- but the assessee was unable to submit due to communication error. The Id. AR requested to allow another opportunity for verification of the transaction of the assessee for the impugned assessment year.

5. The Id. DR vehemently argued and fully relied on the order of the revenue authorities. The Id. DR has drawn our attention in appeal order page 7 para 5.1 which is reproduced as below:

“5.1 I have perused the assessment order and the submission of the appellant. In this case, 6 opportunities for hearing were accorded to the assessee during assessment proceedings but there was no compliance. Hence, the A.O. has rightly passed order u/s. 144 of the I.T. Act. In the order u/s. 144, the Assessing Officer has made addition of cash deposit of Rs. 11,32,408/- in old currency notes during the demonetization period and addition of 8% of deposit of Rs. 9,24,504/- during the remaining period of the year amounting to Rs. 73,960/-. The appellant has explained that he is engaged in the business of sale of handicraft. He has stated that entire deposit in bank account of Rs. 20.53 lacs pertain to business receipts which he has accounted for u/s. 44AD of the I. T. Act. Therefore, the appellant has admitted to cash deposits and others deposits in the bank account. The appellant has not explained the source of cash deposit in old currency notes during the demonetization period of Rs. 11,32,408/-. The Assessing Officer has stated in the assessment order that this amount cannot be sale consideration from the business since business transaction in old currency notes was not allowed by the Government during the demonetization period. The above contention of the Assessing Officer is correct and has not been controverted by the appellant. Therefore, the addition made by the Assessing Officer of Rs. 11,32,408/- on account of unexplained cash deposit in bank account is upheld. As regards, addition made @

8% on total deposits of Rs. 9,24,504/- made in the balance part of the year, I find this contention of the Assessing Officer is correct and has not been controverted by the appellant. Therefore, addition of Rs. 73,960/- is upheld. Grounds of appeal are dismissed.

6. In the result, the appeal is dismissed.”

6. We heard the rival submission and considered the documents available in the record. From perusal of the documents, it is clear that the assessee was never served the notice u/s 142(1) of the Act. There is communication blockage during this assessment period in Kashmir Valley. During the hearing, the ld. DR is unable to bring any evidence the notice was served to assessee during this period. The ld. DR was not able to produce any contrary evidence against submission of the ld. AR. The addition without any reasonable opportunity to defend the assessee of his own case is caused nullity. We are, therefore, of the opinion that interest of justice would be subserved if the impugned order is *set aside* and the matters are remitted back to the ld. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

7. In the result, the appeal of the assessee bearing **ITA No. 168/Asr/2023** is allowed for statistical purposes.

Order pronounced in the open court on 26.07.2023

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