

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1859/DEL/2023**  
**Assessment Year: 2011-12**

Sahid Khan S/o Vakil Kha, R/o H. No. 234, New Sabzi Mandi, Panipat-132103.	<u>Vs</u>	Income-tax Officer, Ward-4, Panipat.
PAN-BAPPK5290N		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>Shri Jai Bhagwan Sharma, Adv.</b>	
<b>Department represented by</b>	<b>Shri Om Parkash, Sr. DR</b>	
<b>Date of hearing</b>	<b>08.08.2023</b>	
<b>Date of pronouncement</b>	08.08.2023	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 29.05.2023, pertaining to the assessment year 2011-12. The assessee has raised following grounds of appeal:

- “1. That the notice issued by the Ld AO W-4, Panipat us 148 dt 31-03-20218 without proper inquiry and recording reasons, is invalid in the eyes of law.
2. That the Id CIT (A), NFAC, Delhi has erred in law in confirming the assessment made by the Id AO without service of notice u/s 148 .
3. That on the facts and circumstances of the case, the Id CIT(A), NFAC,

*Delhi has erred in dismissing the appeal of appellant without giving the proper opportunity of being heard.*

*4. That on the facts and circumstances of the case, the Id CIT (A), NFAC, Delhi has erred in law in confirming the addition of Rs 1326920/- without accepting the additional evidence/s submitted by the appellant.*

*5. That on the facts and circumstances of the case, both the lower authorities have erred in making/confirming the addition of Rs 1326920/- in the income of appellant on account of cash deposited into bank which is from the sales proceeds of retail business of appellant.*

*6. That the appellant hereby requests to accept the appeal, quash the orders of the lower authorities and oblige*

*7. That the appellant craves to add, forego, amend, delete, vary any of the grounds of appeal before final hearing of the annual.”*

2. Facts giving rise to the present appeal are that the Assessing Officer (“AO” in short) was having information regarding cash of Rs. 13,26,920/- deposited by the assessee in S.B. account held by him with ICICI Bank Ltd., Panipat. The case of the assessee was reopened for assessment u/s 147 of the Income-tax Act, 1961 (the “Act”). However, there was no representation on behalf of the assessee before the AO. Therefore, he made addition of Rs. 13,26,920/-. The assessee carried the matter before the learned CIT(Appeals) who also sustained the addition after rejecting the request for additional evidence. Now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that the assessee is a small trader of fruits, having income below the prescribed limit during the relevant assessment, therefore, did not file his ITR for the said assessment year. The assessee deposited a sum of Rs 1326920/- into his bank account from the turnover of the said retail

business in due course of business. The appellant used to transfer the amount to the supplier of goods from the bank after depositing the amount/cash collected from retail sales. He submitted that no notice from the Department was ever received by the assessee, therefore, the AO was not justified in framing the assessment exparte u/s 144/147 of Act, assessing the assessee's income at Rs. 13,26,920/-. He submitted that in appeal the learned CIT(A) was not justified in rejecting to consider the additional evidence filed by the assessee and simply affirmed the action of the AO.

4. On the other hand learned DR supported the orders of the authorities below.

5. I have heard rival submissions and perused the material available on record.

Undisputedly, there was no representation on behalf of the assessee before the assessing authority and the AO framed the assessment u/s 147/144 in the absence of the assessee. As a matter of fact before the learned CIT(A) the assessee had filed detailed reconciliation along with supporting evidence, in the form of additional evidence, to show that the receipts of Rs. 13,27,720/- had duly been shown in the return filed for A.Y. 2011-12. However, the learned CIT(A) did not consider the same by observing that the same were not filed before the Assessing Authority. Looking to the facts and circumstances of the case and to subserve the interest of natural justice, in my considered view, it would be fair and reasonable to restore the matter to the file of AO for decision afresh after providing adequate opportunity to the assessee to represent its case. Accordingly, the order of learned CIT(Appeals) is set aside and the matter is restored to the file of AO to frame the

assessment afresh after affording reasonable opportunity to the assessee to adduce relevant documentary evidence, if any, in support of its claim.

6. Appeal of the assessee is allowed for statistical purposes only.

Order pronounced in open court on 8<sup>th</sup> August, 2023.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**