

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.813/Del/2023  
[Assessment Year : 2017-18]**

Mohd Nazir, S/o-Tahir Husain, R/o-Raisatti, Joya Road, Sambhal, Uttar Pradesh-244302. <b>PAN-AFKPN1424J</b>	vs	ITO, Sambhal.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Mohd Saim, Adv. & Shri Mohd Nazir, Assessee in Person	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	17.08.2023	
<b>Date of Pronouncement</b>	23.08.2023	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National faceless Appeal Centre (“NFAC”) dated 24.11.2021 for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

1. *“That the appellant did not receive any notice dated 13/10/21 to which date of compliance was fixed for 20/10/21, therefore, the Ld.CIT(A) has acted against the principles of natural justice in passing the ex-parte impugned order dated 24/11/21.*
2. *That Ld.CIT(A) has acted injudiciously by confirming the various conclusions and inferences drawn by the Ld.ITO which were erroneous and misconceived.*
3. *That the order passed by the Ld.CIT(A) is illegal, unjust and arbitrary whereby it has confirmed the illegal addition of 36,85,500 u/s 69 of the IT Act made by the ld.ITO, Sambhal.”*

3. Facts giving rise to the present appeal are that the case of the assessee was taken up for scrutiny to verify the source of cash deposits of INR 36,85,500/- in his bank account maintained with Bank of Baroda during Financial Year 2016-17. Before the Assessing Officer (“AO”), there was no representation on behalf of the assessee. Therefore, the AO proceeded to frame assessment *ex-parte* to the assessee u/s 144 of the Income Tax Act, 1961 (“the Act”) order dated 28.11.2019 and made addition of INR 36,85,500/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld. CIT(A), the assessee preferred appeal before this Tribunal.

6. At the outset, Ld. Authorized Representative (“AR”) of the assessee submitted that there was no effective representation on behalf of the assessee. The Assessing Authority passed an *ex-parte* order thereby, the entire deposits in the bank account treated as “undisclosed income” of the assessee. He contended that in the interest of principle of natural justice, an opportunity be given to the assessee. It was further contended that Ld. Counsel of the assessee who was engaged by the assessee, did not appear before the First Appellate Authority and neither filed appeal in time nor he informed the assessee about non-filing of the appeal in time. Even, he did not appear before Ld.CIT(A). He submitted that the assessee would suffer miscarriage of justice if the matter is not restored to the AO for making assessment afresh.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. It is not in dispute that the assessment was framed *ex-parte* to the assessee and even before Ld.CIT(A), there was no effective representation on behalf of the assessee. It is the contention of the assessee that due to negligence of the Ld. Counsel for the assessee, true and correct facts could not be placed before the lower authorities which resulted into impugned additions. It is contended that the assessee would explain the source of cash deposits if an opportunity is given to him. Looking to the facts of the present case and material placed before me, it is seen that there was no effective representation on behalf of the assessee. The principles of natural justice demands that everyone should be afforded a fair and effective opportunity of being heard for explaining the facts. Therefore, to sub-serve the principle of natural justice, I hereby set aside the impugned order and restore the matter to the AO for making assessment afresh. Grounds raised by the assessee are thus, allowed for statistical purposes.

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

Order pronounced in the open Court on 23<sup>rd</sup> August, 2023.

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

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI