

**IN THE INCOME TAX APPELLATE TRIBUNAL ALLAHABAD "SMC"**  
**BENCH, ALLAHABAD**

**BEFORE SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.13/Alld/2023  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Vijay Kumar Sahu Mau Aima, Allahabad, Uttar Pradesh-211002.	<b>बनाम/</b> Vs.	ITO, Ward-1(5) Allahabad-211001.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : CIOPS1718P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Utkarsh Gupta	
Revenue by:	Shri A. K. Singh (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 06/09/2023  
घोषणा की तारीख /Date of Pronouncement: 11/09/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 19.12.2022 for AY. 2017-18.

2. The main grievance of the assessee is against the action of the AO passing an *ex-parte* order u/s 144 of the Income Tax Act, 1961 (hereinafter "the Act") without giving proper opportunity to the assessee to answer/explain to issue raised before him which led to the addition of Rs.9,71,390/- (*Rs.7,91,600/- us/ 69 of the Act and net profit of Rs.1,79,792/-*).

3. Brief facts regarding the aforesaid issue are that the AO noticed that the assessee during the demonetization period between 09.11.2016 to 30.12.2016 had deposited in his bank account cash to the tune of Rs.11 Lakhs. And since the assessee did neither file ITR u/s 139(1) of the Act nor to notice u/s 142(1) of the Act (*i.e. within the time given by*



ITA No.13/Alld/2023  
A.Y. 2017-18  
Vijay Kumar Sahu

AO), he was pleased to make addition of Rs.7,91,600/- u/s 69 of the Act as well as Rs.1,79,792/- (*net profit of 8% of Rs.22,47,400/-*). Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who noted that despite issue of notice thrice, the assessee did not respond to the same. Therefore, he decided the appeal *ex-parte qua* assessee. Aggrieved, the assessee is before this Tribunal.

4. Having heard both the parties and after perusal of the records, it is noted that the assessee is an individual engaged in the business of trading of Chuni Bhushi (*animal feed*) in the name of M/s. Jaganath and Sons; and during the relevant year under consideration, the assessee had maintained two accounts in Union Bank of India (UBI). According to the assessee, he used to regularly file the return of income until AY. 2013-14; and thereafter [for subsequent years] since the business was not doing well and there was no taxable income, he didn't file the ITR; and in the year under consideration (AY. 2017-18), the assessee had deposited in his bank account, the sale consideration received in cash. According to the assessee, he was not *techno-savvy* and, therefore, could not file ITR on time. According to the assessee, belatedly he filed the return of income declaring Rs.2,68,600/- and shown turnover of Rs.31,39,000/-. Thus, declared net profit of more than 8% of the turnover which fact has been acknowledged by the AO at page no. 3 of his assessment order. However, AO treated the belated ITR as non-est and passed the best judgment assessment u/s 144 of the Act without considering assessee's averments and made an addition of Rs.7,91,600/- u/s 69 of the Act as well as computed the net profit earned by assessee of Rs.1,79,792/-. Thus, making total addition



ITA No.13/Alld/2023

A.Y. 2017-18

Vijay Kumar Sahu

of Rs. 9,71,390/-. On appeal, the Ld. CIT(A) has confirmed the action ex-parte qua the assessee. The main grievance of the assessee is that the assessee has not been provided proper opportunity by AO during assessment proceedings which I find force taking into consideration, the overall facts and circumstances discussed (supra). Therefore, relying on the decision of the Hon'ble Supreme Court in the case of Tin Box Company Vs. CIT (249 ITR 216) (SC) wherein the Hon'ble Supreme Court has held that if the assessee has not been granted proper opportunity before the AO, then it should be restored back to the AO for de-novo assessment. It would be gainful to reproduce the order of the Hon'ble Supreme Court in the case of Tin Box Company (supra) wherein it was held as under: -

*"It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :*

*"We will straightway agree with the assessee's submission that the ITO had not given to the assessee proper opportunity of being heard."*

*That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.*

*2. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus:*



ITA No.13/Alld/2023  
A.Y. 2017-18  
Vijay Kumar Sahu

"1. *Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?*"

*In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of the assessee.*

*3. The appeals are allowed. The order under challenge is set aside. The assessment orders, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforestated. No order as to costs."*

5. Since as noted (supra) assessee did not get proper opportunity before the AO, relying on the decision of the Hon'ble Supreme Court in the case of Tin Box Company (supra), I am inclined to set aside the impugned order of the Ld. CIT(A) and restore the matter back to the file of the AO with a direction to frame de-novo assessment in accordance to law. And before me, the Ld. AR of the assessee Shri Utkarsh Gupta has undertaken to file the relevant documents/written submission in respect of the issues and assessee be allowed hearing if he desires as per Rules; and the AO to pass the assessment order afresh after considering the material on record/written submission etc in accordance to law.



*ITA No.13/Alld/2023*

*A.Y. 2017-18*

*Vijay Kumar Sahu*

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

Order pronounced in the open court on this 11/09/2023.

**Sd/-**  
**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

Allahabad दिनांक Dated : 11/09/2023.  
*Vijay Pal Singh, (Sr. PS)*

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order  
Assistant Registrar