

आयकर अपीलीय अधिकरण, इंदौर न्यायापीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.52/Ind/2023
(Assessment Year:2017-18)

Rakesh Soni, 31, Classic Purnima Estate, Khajrana Road, Indore	Vs.	ITO, Ward-2(3) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: BMIPS 8863 G		
Assessee by	Shri Piyush Singhal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.05.2023	
Date of Pronouncement	28.07.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 19.12.2022 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi for Assessment Year 2017-18. The assessee has raised following grounds of appeal:

“On the facts and the circumstances of the case:

- 1. That the Id CIT(A), NFAC was not justified in confirming the action of the AO in making the addition of Rs.9 lacs u/s 69A of the I.T. Act on account of money deposited in bank account.*

2. *That the Id CIT(A), NFAC was not justified in confirming the action of the AO in invoking the section 115BBE as amended on 15th December, 2016.*
3. *The Id CIT(A), NFAC was not justified in passing exparte order u/s 250 in haste without considering adjournment application through portal.”*

2. At the time of hearing. Ld. AR of the assessee has submitted that Ld. CIT(A) has passed impugned order *ex-parte* without considering the request of the assessee for adjournment which was filed through e-mail. He has submitted that the alleged notices issued by the ld. CIT(A) were not received by the assessee and therefore, the assessee could not respond thereto. He has pointed out that the AO has made addition on account of cash deposit in bank account of the assessee and passed exparte order u/s 144 of the I.T. Act, against which, the assessee had preferred an appeal before the ld. CIT(A) and wanted to produce additional evidences in support of the source of cash deposit in bank account. He has referred the return of income filed by the assessee for the AYs 2011-12 to 2016-17 and submitted that the assessee has been filing returns of income regularly which shows the source of deposit made in bank account. Ld. AR has pleaded that impugned order of the ld. CIT(A) may be set aside and matter may be remanded back to the record of the ld. CIT(A) for fresh adjudication after considering the additional evidences filed by the assessee.

3. On the other hand, ld. DR has submitted that the assessee has not responded notices issued by the AO and even not filed any return of income for the year under consideration. Consequently, the AO passed best judgement assessment order u/s 144 of the I.T. Act. Even before the ld. CIT(A), there was no response to various notices issued by the ld. CIT(A) and consequently, the impugned order was passed exparte and the appeal was dismissed for want of any reply and supporting evidences. He has relied upon the order of the authorities below.

4. We have considered rival submissions as well as carefully perused the impugned orders of the authorities below. The assessee has not filed any return of income for the year under consideration. The AO received information regarding cash deposit in the bank account of the assessee of Rs.10,10,000/- during demonetization period. Consequently, the AO issued notices u/s 142(1) of the I.T. Act on 26.04.2019 for filing return of income. However, there was no response on behalf of the assessee to the said notice as well as subsequent notices issued by the AO. Ultimately, the ld. AR of the assessee filed submission on behalf of the assessee before the AO explaining the source of deposit, which was not accepted by the AO and made addition of Rs.9,00,000/-. Since, no return of income was filed by the assessee, the assessment was framed by the AO u/s 144 of the I.T. Act. The assessee filed an appeal before the ld. CIT(A) but there was no response for notices issued by the ld. CIT(A) and consequently, the appeal was dismissed vide impugned exparte order. On careful perusal of the impugned order, we find that the ld. CIT(A) has not discussed the issue raised in the appeal on merits and dismissed the appeal of the assessee summarily for want of any submission and supporting evidences. The ld. AR has submitted that the assessee could not receive the alleged notices and the assessee has sent an e-mail for adjournment of the hearing which shows that the assessee did not receive the alleged notices issued by the ld. CIT(A).

5. Having considered rival submission as well as relevant facts and material on record, we find that assessment order and impugned order were passed exparte. The explanation of the assessee regarding source of deposit in bank account along with supporting evidences remained unexamined by the authorities below. Accordingly, in the interest of justice, the impugned non-speaking order of the ld. CIT(A) is set aside and the matter is remanded to the record of the AO for fresh adjudication after considering the explanation of the assessee and supporting evidences to be filed by the assessee. Needless to mention here that the assessee shall be afforded adequate opportunity of being heard before passing the fresh assessment order.

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

Order in pronounced in Open Court on 28.07.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 28.07.2023

v..s

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore