

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, 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.199/Ind/2023
(Assessment Years:2017-18)

Suresh Kumar Ahuja Sindhi Colony Hoshangabad	Vs.	ITO-2 Itarsi
(Appellant / Assessee)		(Revenue)
PAN: ABBPA1666J		
Assessee by	Ms. Nisha Lahoti AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.10.2023	
Date of Pronouncement	26 .10.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 17.03.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for A.Y.2017-18. The assessee has raised following grounds of appeal:

“That on the facts and circumstances of the case, the CIT(A) is not justified in affirming the order of the Assessing Officer in making an addition of the money deposited in Old discontinued currency during the demonetization period to the income of the assessee.”

2. The assessee is an individual and filed return of income on 01.11.2017 declaring total income of Rs.7,43,420/-. The case was selected for scrutiny through CASS to verify the deposit of cash in old demonetized currency notes in the bank account. The AO has passed the assessment

order u/s 144 and made the addition of the cash deposit of Rs.12,40,500/- during the demonetization period w.e.f. 08.11.2016 to 30.12.2016. The assessee challenged the action of the AO before the CIT(A) but there was no response by the assessee to the various notices issued by the CIT(A). Therefore, in absence of any submissions and supporting evidence the Ld. CIT(A) has dismissed the appeal.

3. Before the Tribunal the Ld. AR of the assessee has submitted that the assessment order was passed u/s 144 as the assessee was not having access to the notices issued by the AO. Similarly, the alleged notices issued by the CIT(A) were also not come to the notice of the assessee as the assessee was not having access to the e-mail ID on which the notices were sent by the CIT(A). The Ld. AR has explained that the assessee is not familiar with the digital technology and e-mail as required in form no.35 was given by one of the relative of the assessee and therefore, there is miscommunication of the notices issued by the CIT(A). The Ld. AR has submitted that CIT(A) has dismissed the appeal of the assessee summarily for non-prosecution and therefore, the assessee could not submit the explanation with supporting evidence for source of the deposits made in the bank account either before the AO or before the CIT(A). She has pleaded that the matter may be set aside to the record of the AO for adjudication after considering the explanation and evidence to be filed by the assessee to explain the source of deposit made in the bank account.

4. On the other hand, Ld. DR has fairly submitted that the addition was made by the AO for want of any explanation and supporting documents to explain the source of deposit which has been confirmed by the CIT(A) as the assessee failed to respond to the notices issued by the CIT(A). Thus, the Ld. DR has submitted that he has no serious objection if the matter is remanded for proper verification, examination of the relevant record and explanation and deciding the same afresh.

5. Having considered the rival submission and careful perusal of the order of the authorities below we find that the AO has made the addition

of the entire deposit made by the assessee for want of explanation and supporting evidence as the assessee failed to respond to the notices issued by the AO. Though the assessee filed the appeal before the Ld. CIT(A), however, there was no participation in the hearing on the part of the assessee despite the notices issued by the CIT(A). The CIT(A) has dismissed the appeal of the assessee in para 4 as under:

“4. Findings:

In this case, Notice was issued on 29.12.2020 to the appellant to furnish written submissions and documents on or before 13.01.2021. It was specifically stated in the said notice that if no submissions/ information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing to say in the matter and the department may proceed ahead based on material available on record. In view of the fact that no written submissions/information/ documents were received from the appellant, nor any adjournment sought, another notice was issued on 25.11.2021 to the appellant to furnish written submissions, information and documents on or before 10.12.2021. It was specifically stated in the said notice that if no submissions/information/ documents were received within the stipulated time period, it would be presumed that the appellant had nothing further to say in the matter and the appeal would be decided on merits on the basis of material available on record. No written submissions/information/documents were received, nor any adjournment sought. Accordingly, yet another notice was issued on 18.08.2022 to the appellant to furnish written submissions, information and documents on or before 02.09.2022 and another notice was issued on 02.03.2023 to the appellant to furnish written submissions, information and documents on or before 09.03.2023. In view of the fact that no written submissions/information/ documents have been received till date from the appellant nor any adjournment sought, appeal is being decided on the basis of material available on record.

Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 08.12.2019 filed by the appellant along with Form 35. The material on record has been carefully perused.

The facts of the case are that despite adequate opportunity by AO vide issue of notices to explain cash deposits made during demonetization, assessee did not furnish explanation regarding cash deposits. AO was constrained to pass orders u/s 144, adding Rs. 12,40,500/- to income.

In appeal, appellant has merely stated that AO was not justified in making the additions. However, in the absence of any evidence to substantiate such mere statement, there is no material on record to warrant interference in the order of the AO.

In view of the fact that there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby dismissed.”

6. Thus, both the AO as well as CIT(A) has passed the impugned orders in absence of any explanation, information and documents on the part of the assessee. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order is set aside and matter is remanded to the record of the AO for re-adjudication after considering explanation and supporting documents to be filed by the assessee for source of deposit in the bank account. Needless to say before passing fresh order the assessee be given an appropriate opportunity of hearing.

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

Order pronounced in the open court on 26.10.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 26.10.2023

Patel/Sr. PS

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*