

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1982/M/2023
Assessment Year: 2018-19**

Shri Usman Gani Haroon Bara, Ground Floor, 218 Kambekar Street, Masjid West, Mumbai – 400 003 PAN: AAGPB9052M	Vs.	Income Tax Officer, Ward – 30(1)(1)-Current Charge holder, Old Charge ITO Wd.17(3)(5), Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri S. Goyal, A.R.
Revenue by : Shri Ajay Singh, D.R.

Date of Hearing : 10 . 10 . 2023

Date of Pronouncement : 31 . 10 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Usman Gani Haroon Bara (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 09.05.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2018-19 on the grounds inter-alia that :-

“1) On the facts and circumstances of the case, the Ld. CIT (A)-NFAC erred in upholding the order passed by the CPC - ITR Ld. AO u/s 143(3) regarding dis-allowances of cash payments exceeding Rs. 10,000/- without considering material evidence [Payee identified with PAN) and the submissions made by the appellant and placing heavy

reliance on the technicalities of the law without considering the commercial expediency factor.

2) The Ld. CIT (A) - NFAC erred in not making any further enquiry by himself and/or directing the AO to make further inquiry and report the result of the same to him before disposal of this impugned appeal even though the powers of the CIT (A) were co- terminus with that of the Ld. AO.

3) The Ld. CIT (A) - NFAC erred in not passing a speaking order on the matter relating to charge of interest under sec. 234A only on the income returned and not on the assessed income where the tax liability had been duly discharged on the returned income before the original due date of the filing of the return under sec. 139(1).

4) The Ld CIT (A)- NFAC failed to give an opportunity of personal hearing by presenting a guide which contained steps different from the one stated in the Annexure to the notice and as such even after numerous attempts made by the Appellant he was not successful in doing the video conferencing on which an adverse opinion/view has been expressed in the order under appeal. The opportunity of personal hearing was merely a ritualistic exercise with no sincere appreciation and understanding of the appellants problems.

5) The Appellant craves leave to add, alter, amend, modify, substitute, and delete one or more grounds of appeal at any time before or during the course of hearing of the appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is an individual tax payer carrying on the business of transport, filed its return of income declaring total income of Rs.11,24,290/-, which was processed under section 143(1) of the Income Tax Act, 1961 (for short ‘the Act’) by making addition of Rs.1,75,643/- by making disallowance as under:

<i>“GST return late filing fee</i>	<i>Rs.2000/-</i>
<i>Electricity</i>	<i>Rs.76,978/-</i>
<i>Transport Charges</i>	<i>Rs.83,175/-</i>
<i>Office equipment</i>	<i>Rs.13,490/-</i>
<i>Total</i>	<i>Rs.1,75,643/-”</i>

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the

assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The sole issue raised by the assessee in this case is challenging the addition of Rs.83,175/- on account of cash payment by violating the provisions contained under section 40A(3) of the Act.

6. Undisputedly the assessee has made the payment of Rs.83,175/- in cash to SARCO Road Lines who has further paid the same to six truckers as is evident from ledger maintained by SARCO Road Lines available at last page of the synopsis filed by the assessee. It is also not in dispute that as per proviso to section 40A(3) the cash payment towards transport charges is restricted to an amount of Rs.30,000/- in a day for the convenience of tax payers and due to certain expenses related to transport.

7. In the backdrop of the aforesaid undisputed facts when we consider the contention raised by the Ld. A.R. for the assessee that the cash payment was made under emergency circumstances because the truckers were insisting upon to take the cash payment as they had to go back on the same day, the contention is sustainable. Because in the transport business when individual truckers are there it is for their convenience and for the convenience of the business sometimes cash payment is made as insisted upon.

8. Furthermore, it is contended by the Ld. A.R. for the assessee that the payment was made at 4:30 P.M. when bank was not opened at that time, the cash was paid due to business expediency. This contention is also tenable in the practical circumstances being faced by the truckers and the small businessmen otherwise they would lose their business/bread and butter if all the time they insist upon making the payment through banking channel to the truckers. The assessee is having turnover of Rs.6,00,00,000/- and in view of the matter this is the small amount paid by the assessee in cash. Moreover, it is not the case of the Revenue that the cash payment made by the assessee is an unaccounted cash or black money and there is nothing on the file to show any dishonesty and impropriety on the part of the assessee to make such payment.

9. So in view of what has been discussed above, we are of the considered view that the cash payment made by the assessee to the SARCO Road Lines who had further paid the same to six truckers as transport charges was under emergency circumstances and business expediency and by taking lenient view the AO is directed to delete the addition of Rs.83,175/-.

10. Resultantly, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 31.10.2023.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.10.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.