

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2861/DEL/2023**  
**Assessment Year: 2017-18**

Madan Lal Jain, 5525, Sadar Thana Road, Delhi-110006.	<u>Vs</u>	Income-tax Officer, Ward-61(5), Delhi.
PAN- AAGPJ0768G		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		Ms. Monalisa Naity, Adv.
<b>Respondent by</b>		Shri Om Parkash, Sr. DR
<b>Date of hearing</b>		21.12.2023
<b>Date of pronouncement</b>		21.12.2023

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 01.08.2023, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. That the CIT (A) has erred in law in confirming the assessment order passed by the Ld. AO U/s 144 dated 27.12.2019 and dismissing the appeal filed by the Appellant.

2. That the CIT (A) has erred in law in confirming the addition of Rs. 22,72,000/- on account of alleged un- explained cash deposit U/s 69 of the Income Tax Act, 1961

3. That the CIT (A) while confirming the assessment order has not considered that proper opportunity of hearing is not given to the Assessee

*for representing its case and therefore the CIT (A) has erred in law in passing of the exparte order.*

*4. That the CIT (A) has erred in law in confirming the assessment order, without considering that in the case the assumption of jurisdiction U/s 144 of the Income Tax Act, 1961 of the Ld. AO is clearly bad in law.*

*5. The appellant crave leave to add/alter/modify/delete any of the aforesaid grounds of appeal.”*

2. There is a delay of 11 days in filing the appeal by the application. An application seeking condonation of delay has been filed. Learned counsel for the assessee reiterated the submissions as made in the application and stated that the assessee is a senior citizen about 85 years of age and was suffering from viral fever during the relevant period. Medical prescription has been enclosed. Therefore, it was prayed that the delay of 11 days in filing the appeal was not deliberate and was caused by reasonable cause.

3. On the other hand, learned DR opposed the submissions.

4. I have heard rival contentions. Looking to the fact that the delay of 11 days in filing the appeal was caused due to illness of the assessee, who is a senior citizen, the delay in filing the appeal is condoned and the appeal is admitted for hearing.

5. Apropos to the grounds of appeal, learned counsel for the assessee at the outset submitted that no effective opportunity was provided to the assessee and the assessment was framed ex parte to the assessee u/s 144 of the Income-tax Act, 1961 (the “Act”). Learned counsel submitted that the authorities below failed to appreciate the fact in right perspective and the learned CIT(A) also did not

consider the submissions made on behalf of the assessee and proceeded to sustain the addition ex parte to the assessee.

6. Learned DR opposed the submissions and supported the orders of authorities below.

7. I have heard rival submissions and perused the material available on record. Learned CIT(A) dismissed the appeal by observing as under:

*“5.4 Due to the non-compliant attitude of the appellant, the appeal has to be decided on merits and facts available on record. I have carefully perused the grounds of appeal, statement of facts and the assessment order to look for any fact which may be helpful in furthering the cause of the appellant, but could not find any. The A.O had made the addition specifically because the appellant failed to give any satisfactory explanation regarding the source of cash deposit, despite being provided with reasonable opportunity. Even during the present appellate proceedings, the appellant failed to give any submission / evidence whatsoever and chose to remain non-compliant. The facts stated in the grounds of appeal are not backed by any evidence, for example the appellant has claimed to have duly filed the return of income for A.Y. 2017-2018 vide receipt no 713103182695248 dt. 31.03.218 in response to notice u/s 142(1) along with computation sheet and complete set of Balance Sheet (which the AO apparently is said to have ignored) a copy of which is said to be enclosed. But no such evidence / document was ever filed / enclosed during the appellate proceedings and hence such claims do not come to rescue of the appellant. The appellant has not even provided a primary and basic evidence about his running any kind of business. Thus, the appellant has not discharged the primary onus of explaining his case. The appellant has not produced any material to controvert the finding of A.O. on merits. Further, from the above conduct of the appellant, it is clear that the appellant is not interested in pursuing his appeal. In the event, I have no reason to interfere with the findings of the AO. In view of these facts, I am of the opinion that no interference is called for in the AO's assessment order and therefore, the grounds of appeal are dismissed.”*

8. Learned CIT(A) has not given any finding on the submissions filed by the assessee. Even the AO also made an ex parte order. Therefore, looking to the facts and material placed before me I am of the considered view that the authorities below ought to have adverted to the submissions made by the assessee. Therefore, to subserve the principles of natural the impugned order is hereby set aside and the assessment is restored to the file of the AO to make assessment afresh, in accordance law, of course, after affording adequate opportunity of being heard to the assessee. I order accordingly. Grounds are allowed for statistical purposes.

9. Appeal of the assessee stands allowed for statistical purposes.

Order pronounced in open court on 21.12.2023.

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

**\*MP\***

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**