

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No.622/Ahd/2023**  
**Asstt.Year :2017-18**

Nasimbanu S. Kothiya 201, Paradise Park Khoja Society Nr. Vemandir, Kankaria Maninagar, Ahmedabad. PAN : BBXPK 4772 N	Vs	ITO, Ward-5(3)(4) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assesseeby :	None
Revenue by :	Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/01/2024  
घोषणा की तारीख /Date of Pronouncement: 24/01/2024

**आदेश/ORDER**

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short referred to as Id.CIT(A)] under section 250(6)of the Income Tax Act, 1961 dated 16.6.2023,pertaining to Asst.Year 2017-18.

2. The grounds raised by the assessee are as under:

- i) *Learned CIT (A) (NFAC) has erred in passing order u/s 250 of the Income Tax Act.*
- ii) *Notice for hearing issued by CIT (A) for hearing on 29/05/2023 is not properly served on applicant's address which is bad in law there for no reply was filed.*
- iii) *CIT(A) should have issued another Physical notice via offline mode and see that same is served to Appellant.*
- iv) *The learned ITO 5(3)(4) has erred in making addition of Rs.8,52,500/- U/S.69A for Assessment Year 2017-18.*

- v) *Assessee have received notice u/s 142(1) for filing of return by ITO 4(1)(1) and order passed u/s 144 by ITO 5(3)(4). Learned ITO 5(3)(4) have not obtained permission From higher authority to issue notice u/s 142(1) which is bad in law therefore assessment order is liable to be quashed.*
- vi) *ITO may have issued notice U/s.148 to include the cash deposited made to the banks but, Notice u/s 148 has not issued by LD ITO and he has taken therecourse of only issue of not assessment order is liable to be quashed.*
- vii) *Before passing order ITO must have to issue show cause notice for making addition of income which was also not issued therefore assessment order is liable to be quashed.*

3. None appeared on behalf of the assessee. However, on going through the order of the authority below, i.e. both the AO and the ld.CIT(A), we find that the appeal needed to be restored back to the file of the ld.CIT(A) for adjudication afresh. The reasons for the same are as follows.

4. A perusal of the assessment order reveals that addition of Rs.8,52,500/- was made to the income of the assessee for the reason that the assessee was unable to explain and establish the nature of cash deposited in her bank account to the said extent. The AO treated the cash deposits as unexplained money under section 69A of the Act and levied tax at the rate of 60% thereon in accordance with the provisions of section 115BBE of the Act. The AO also noted that the assessee had earned interest income of Rs.46,907/- on fixed deposits and from saving bank account, and added the same also to the income of the assessee. Since no return of income was filed by the assessee, her income was assessed at Rs.8,99,407/- including the additions made by the AO as above.

The assessment order reveals that the assessee was asked to explain the source of cash deposited during demonetization period. The assessee filed submission dated 3.7.2019 explaining the source of cash as sourced from amongst others, her savings from tuition

income and cash withdrawn from bank redeposited. The AO asked the assessee to furnish details of earlier savings from tuition and income and cash withdrawal from the bank with supporting evidence. The assessee was unable to furnish any such evidence, and infact stated to the AO that the query is not tenable, and the AO, thereafter went to hold that the source of cash deposited in bank to the tune of Rs.8,52,500/- having not been explained by the assessee, the entire amount is liable to be treated as unexplained money under section 69A of the Act, and added to the income of the assessee.

5. The assessee went in appeal before the ld.CIT(A). The ld.CIT(A) noted that the prescribed form for filing appeal before the ld.CIT(A) i.e. Form No.35, mentioned no grounds of appeal of the assessee. The assessee was served with notice of defect in the appeal, in response to which, no response was received from the assessee. The Ld.CIT(A) therefore treated the appeal as defective and dismissed it as un-admitted.

6. On going through the order of the ld.CIT(A), we find that the assessee was not given sufficient opportunity to cure the defect. It appears that the assessee was served only one notice for curing the defect and failing to comply with this one notice prompted the ld.CIT(A) to dismiss the assessee's appeal as unadmitted. Surely, there was lack of proper opportunity to the assessee to cure the defect, and dismissal of the assessee's appeal therefore has resulted in gross injustice to the assessee, having been denied a fair chance to challenge the huge addition to her income.

Therefore, in the interest of justice, we consider it fit to restore the issue to the ld.CIT(A) to provide fresh opportunity to the assessee

to file grounds of appeal, and thereafter adjudicate the same in accordance with law.

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

**Order pronounced in the Court on 24<sup>th</sup> January, 2024 at Ahmedabad.**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad,dated 24/01/2024