

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.3011/Del/2023
(Assessment Year: 2017-18)

Victor Soni FlatNo.165, Dream Land Apartments, Pocket-10, Nasirpur, Sector-1A, Dwarka, New Delhi. PAN No.CSZPS2748Q	Vs.	ITO, Ward-43(6), Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Mahesh Sharma, CA
Revenue by	Shri Amit Katoch, Sr. DR

Date of hearing:	08.02.2024
Date of Pronouncement:	27.02.2024

ORDER

PER ANUBHAV SHARMA, JM :

The Assessee has come in appeal against the order dated 29.11.2019 passed by the Income Tax Department – National Faceless Appeal Centre (NFAC) u/s 250 of the Income Tax Act, 1961 (hereinafter referred as “the Act”) being Appeal No. 17/10299/2019-20, pertaining to AY 2017-18.

2. The Assessee is an Ex Indian Army Men and after retiring opened a Mother Dairy Booth at Naraina, New Delhi and was running this booth from 26th February 2007 till. The assessee claims was not

aware and versed with the online procedures of filing the online income tax returns and did not file the ITR for the year under review, i.e., AY 2017-18. The assessment proceedings were completed u/s 144 of the Income Tax Act, and the Ld. AO made the addition of Rs.1,71,33,500/- being the amount of total deposit in the Bank account of the assessee while enquiring cash deposit of Rs.28,86,000/- during demonetization. The assessment u/s 144 of the I.T. Act was proceeded and the assessment order was passed by the Ld. Income Tax Officer dated 29.11.2019. The Ld. Income Tax Officer had made additions and a net demand of Rs.1,69,41,597/- was raised from the assessee. The Ld. Income Tax Officer initiated penalty proceedings u/s 271AAC though the Income Tax demand after assessment had already been paid by the assessee. The aggrieved assessee filed an Appeal against the addition made and initiation of penalty in the office of CIT(Appeals) NFAC. The Ld.CIT(A), NFAC, rejected the appeal. The rest of the facts are as on record.

3. The assessee is in appeal raising following grounds:

- *“The order passed by the Ld. CIT(Appeals) is against the fact of the case and hence bad in law and facts.*
- *The Ld.CIT(Appeals) has erred in not deleting the addition, even though the Tax demand has been created on the basis of an Ex-parte Assessment Order u/s 144 due to the*

non-receipt of the notices and non-awareness of the ongoing assessment by the assessee.

- *The Assessee never agreed to the addition u/s 144, which has been done on the basis of the total credits/receipts in the bank account of the assessee for the whole year which actually is the turnover of the assessee and not the income, as has been claimed in the assessment order u/s 144 of the Income Tax Act.*
 - *The assessee also disagrees with the initiation of the penalty u/s 271AAC of the Income Tax Act, as the Ld. Assessing Officer is treating the amount of deposits in the bank as Income.*
 - *The Ld.CIT(Appeals) has erred in not deleting the initiation of the Penalty and concluding that assessee's claim is not bona fide."*
4. Heard and perused the record.
5. At the time of hearing in regard to turnover of Assessee and the bank deposits of sales turnover following details are provided:
1. *"Copy of Statement of Accounts received from Mother Dairy, showing the Total Purchase amount of Rs.1,91,73,362/-. We have also shown this amount as our purchase in the Profit & Loss account prepared for the period and submitted before your Honour yesterday.*
 2. *Copy of the Concessionaire Agreement signed with Mother Dairy dated 16th Feb 2015 valid for a period of two years from 2015 to 2017.*
 3. *Copy of the Bank Statement from our books of accounts, for Canara Bank A/c No.2846201000173, showing the total deposit of Rs.1,80,55,778/- and cash deposit of Rs.1,79,16,100/-. However, this amount of cash deposit has been wrongly mentioned as Rs.1,71,33,500/- and*

bank name has also been wrongly mentioned as Punjab National Bank in the assessment order.

4. *Copy of the first page and last page of Canara Bank Statement to show that correct name is Canara Bank and account number is same as mentioned in the assessment order.”*

6. After considering the nature of controversy involved and the evidences filed showing that the assessee had received stock from Mother Dairy and which was sold and same accounted in the bank, there appears to be a justification of the deposits during demonetisation. However, as the Ld. AO was not having this opportunity of examining the response and evidences, the additions were made. Thus, the issue on merits is restored to the files of the Ld. Assessing Officer to take into consideration the aforesaid evidences, or call for further response of the assessee and decide the issue afresh.

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

Order pronounced in the open court on 27.02.2024

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 27.02.2024

*Kavita Arora, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI