

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.352/Lkw/2023  
Assessment Year: 2017-18

Vinay Bhartia, 55/58, Kahoo Kothi, Naya Ganj, Kanpur-208001 PAN: ACHPB 6554B	Vs.	The Income Tax Officer, Ward 1(1)(5), Aayakar Bhawan, 16/69, Civil Lines, Kanpur-208001
(Appellant)		(Respondent)

Appellant by	Shri P.K. Kapoor, CA
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (DR)
Date of hearing	26/02/2024
Date of pronouncement	29/02/2024

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

This appeal has been preferred by the assessee against order dated 20.09.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the return declaring total income of Rs.5,18,390/- was filed for the captioned year. The case was selected under CASS for carrying out complete scrutiny and, thereafter, statutory notices were issued from time to time requiring

the assessee to furnish various details and documents. It was selected for scrutiny for the reason that an amount of Rs.1,35,00,000/- had been deposited in SBN currency during the demonetization period. However, in spite of various notices being issued requiring the assessee to explain the source of said cash deposits, no reply was forthcoming from the part of the assessee. Therefore, the Assessing Officer proceeded to make an addition of Rs.1,15,00,000/- in terms of Section 68 of the Income Tax Act, 1961 (hereinafter called the 'Act') treating the same as unexplained cash credit. The Assessing Officer also invoked the provisions of Section 115 BBE of the Act.

3. Aggrieved, the assessee approached the Id. First Appellate Authority challenging the addition. However, in spite of the assessee being given as many as six opportunities, none of the opportunities were availed in as much as the assessee sought three adjournments and on three occasions no reply was filed. Therefore, the Id. First Appellate Authority proceeded to dismiss the assessee's appeal by holding that based on the details on record there was no reason to interfere with order of the Assessing Officer.

4. Aggrieved, the assessee has now approached this Tribunal challenging the dismissal of his appeal by the NFAC by raising the following grounds of appeal:

*"1. BECAUSE the impugned order has been passed by Id."CIT(A) " without affording due and effective opportunity of being heard to the "appellant", consequently, the impugned ex-parte order deserves to be set aside and matter restored to Id. "CTT (A)" for passing the order a-fresh after affording reasonable opportunity of being heard to the "appellant".*

*2 BECAUSE the notice u/s.143(2) dated 11.08.2018 is no notice in the eyes of law, as the requisites of sub-section (2) of section 143 are not satisfied and consequently the assessment order dated 31.12.2019 passed by Income-tax Officer, Ward-1(1)(5), Kanpur, deserved to be held as illegal.*

*WITHOUT PREJUDICE TO THE AFORESAID*

*3. BECAUSE the Id. "CIT(A)" has erred in law and on facts in confirming the action of the assessing officer in invoking provisions of section 68 of the "Act" and in sustaining the addition of Rs.1,15,00,000/- on the ground that the "appellant" had not been able to furnish satisfactory reply to the assessing officer.*

*4. BECAUSE on the facts and in the circumstances of the case, the provisions of section 68 are not attracted and as such, the Id. CIT(A) " ought to have deleted the addition of Rs. 1,15,00,000/-made by the assessing officer by invoking section 68 of the "Act".*

*5. BECAUSE on a due consideration of material and information available on record, particularly that -*

*(i) the appellant maintained regular books of accounts on day to day basis alongwith stock records, which were produced before the assessing officer during the assessment proceedings and no discrepancies were found therein;*

*(ii) the appellant had deposited cash in his bank account out of cash in hand available in the cash book which had accrued out of proceeds of sales made out of stock available and recorded on a daily basis in the books of account,*

*(iii) the books of accounts were duly audited under the Income-tax Act and no discrepancy was reported by the tax auditor,*

*(iv) the books of accounts were not rejected by the assessing officer, and*

*(v) Sales, purchase and stocks were supported by VAT returns which have been duly accepted by the VAT authorities.*

*the Id. – CIT(A) ought to have deleted the addition of Rs.1,15,00,000/- made by the assessing officer as unexplained cash credit u/s 68 of the Act on the ground that the assessee had failed to explain the real source of cash deposited in SBN currency during the demonetization period.*

*6. BECAUSE on the facts and in the circumstances of the case provisions of section 68 of the "Act" were not attracted in the case of the "appellant" and consequently the Id. "CIT(A)" should have held that the provisions of section 115BBE of the "Act" could not have been applied for taxing the impugned addition of Rs. 1,15,00,000/-.*

*7. BECAUSE without prejudice to the earlier ground, while confirming the addition of Rs. 1,15,00,000/- the Id. CTT(A) failed to appreciate that the said addition was made by the assessing officer without making adjustment in the profit of the appellant which ought to have been adjusted since the appellant has already credited the amount of cash deposits by way of sales in the profit and loss account and profit has accordingly been determined and shown in the return of income and therefore addition made without making adjustment in profit declared in the return has resulted in double addition.*

*8. BECAUSE case laws relied upon by the authorities below are not relevant to the facts of the present case and as such the same are distinguishable and reliance thereon by the lower authorities is wholly misplaced.*

*9. BECAUSE the order passed by Id. "CIT(A)" is without appreciating the facts of the case and is based on presumption, surmises and conjectures.*

*10. BECAUSE the order appealed against is contrary to facts, law and the principles of natural justice.*

*11. The appellant craves leave to alter, amend or withdraw all or any of the grounds of appeal on or before the hearing of appeal."*

5. The Id. Authorized Representative prayed that although there was non-compliance on the part of the assessee during the first appellate proceeding, now, if given an opportunity, the assessee shall duly comply and submit the required details before the NFAC.

6. Per contra, the Id. Senior Departmental Representative opposed the prayer of the Id. AR and submitted that the assessee was habitually non compliant and, therefore, no further opportunity was required to be given.

7. We have heard the rival submissions and have also perused the material available on record. It is true that the assessee had been non compliant during the course of First Appellate Proceedings as well as in proceedings before the Assessing Officer. However, keeping in mind

the undertaking given by the Id. Authorized Representative before us, we deem it appropriate to restore the issue to the file of the NFAC for the purpose of deciding the issue afresh in accordance with law after giving a proper opportunity to the assessee in this regard. We also caution the assessee that should the assessee fail to avail opportunity now being granted, the NFAC shall be at liberty to pass a speaking order, in accordance with law, even if it is ex-parte qua the assessee.

8. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

(Order pronounced in the open court on 29/02/2024)

**Sd/-**  
**( ANADEE NATH MISSHRA )**  
**Accountant Member**

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**Judicial Member**

Dated: 29/02/2024  
Aks

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Asstt. Registrar