

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

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

ITA No.363/Lkw/2023  
Assessment Year: 2017-18

Naseem Ahamad, H.No. 57, Bhakhamau, Behta, Bakshi Ka Talab, Lucknow. PAN: APQPA 4484H	Vs.	The Income Tax Officer, Office of the Income Tax Officer, Range-3(2), Lucknow.
(Appellant)		(Respondent)

Appellant by	Shri Shubham Rastogi, Advocate
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (DR)
Date of hearing	23/01/2024
Date of pronouncement	29/02/2024

**ORDER**

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

This appeal has been preferred by the assessee against order dated 21.11.2023 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 assessee's case was selected for assessment based on the reason that the assessee had, during the Financial Year 2016-17 (including the demonetization period), deposited cash in his Bank accounts amounting to

Rs.26,61,875/- and the total credits found in his Bank account amounted to Rs.58,64,818/- but no return of income had been filed by the assessee for the captioned assessment year. Statutory notices were issued from time to time requiring the assessee to explain the cash deposits as well as the source of the credit entries appearing in the bank account. However, the assessee did not respond to any of the notices and, therefore, the Assessing Officer proceeded to complete the assessment in terms of Section 144 of the Income Tax Act, 1961 (hereinafter called the 'Act') and completed the assessment at Rs.58,64,818/- u/s. 69A of the Act. The Assessing Officer also invoked the provisions of section 115BBE of the Act.

3. Aggrieved, the assessee preferred an appeal before the Id. First Appellate Authority. However, the assessee sought adjournments on as many as six dates. Since no proper response was forthcoming from the assessee, the NFAC proceeded to dismiss the appeal.

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

*1. The Id. C.I.T. (A), NFAC, erred on facts and in law in passing Ex-parte Order on 21.11.2023 without appreciating*

*that there was a reasonable cause being medical reason of Counsel of the Assessee.*

*2. The Ld. C.I.T.(A), NFAC while passing the Exparte Order without appreciating that in the adjournment application filed on 16.11.2023 seeking adjournment for medical reason due to Knee Replacement Surgery of Counsel along with supporting evidence being Discharge Summary from Hospital etc.*

*3. That Ld. C.I.T.(A), NFAC, erred on facts and in law in upholding addition of Rs. 58,64,818/- u/s 69A of I. T. Act, being Cash and Cheque deposited in Union Bank Current Account and Saving Bank Account without appreciating that the credits in Bank Account are out of Sale of Building material, sale of House, Sale of Old Car and from Agriculture Income.*

*4. The C.I.T.(A) NFAC failed to appreciating that the Assessee is showing income from Presumptive Basis under section 44AD of I. T. Act from sale of Building Material and proceeds realized from sale through Cheque and Cash has been deposited in the Bank Account.*

*5. The Id. C.I.T. (A) NFAC fails to appreciate that the Cash Deposited in Union Bank Current Account and Saving Bank Account was available with the Assessee as Cash in hand out of sale of old ancestral House situated at Village Bhakamau, BKT, Lko. For a consideration of Rs. 11,00,000/-.*

*6. The Ld. C.I.T. (A) NFAC failed to appreciate that the Cash Deposited in Union Bank Current Account and Saving Bank Account was available with the Assessee as Cash in hand out of sale of old Car Mahindra Scorpio for Rs.4,75,000/*

*7. The Ld. C.I.T. (A) NFAC failed to appreciate that the Cash Deposited in Union Bank Current Account and Saving Bank Account was available with the Assessee as Cash in hand out of sale of Agriculture Produce of Rs. 1,00,000/- Lr.o agriculture land available with the Assessee.*

8. *The Id. C.I.T. (A) NFAC failed to appreciate that the Cash Deposited in Union Bank Current Account and Saving Bank Account was available with the Assessee as Cash in hand out Cash received from wife Smt. Raziya Rs. 50,000/- being her Streedhan which was available with her sut of her accumulated savings.*

9. *The Ld. C.I.T. (A) erred on facts and in law in upholding the addition of Rs. 15,44,000/ being Cash deposited in Union Bank Current Account during demonetization period and Rs. 9,50,000/ other than Demonetization Period (out of total addition of Rs. 58,64,818/-) out of Cash in hand available from sale of Building Material and Other Sales Proceeds and savings.*

10. *The Ld. C.I.T. (A) erred on facts and in law in upholding the addition of Rs. 2,33,000/- (out of total addition of Rs. 58,64,818/-) without appreciating that the amount is a Loan given by Union Bank.*

11. *The Ld. C.I.T. (A) erred on facts and in law in making addition of Rs. 2,00,000/ (out of total addition of Rs. 58,64,818/-) without appreciating that the amount credited in Union Bank Saving Account is Inter Bank transfer entry from current account to Saving Bank Account.*

12. *The Ld. C.I.T. (A) failed to appreciate that in not considering that when assessee has already shown the impugned amount in its Gross Receipts and paid tax thereon, further addition made by the A. O. by again treating the same cash as unexplained money will amount to double addition in the hands of the assessee.*

13. *The Ld. C.I.T. (A) failed to appreciate that cash has been deposited out of recovery of sale consideration / provision of services and thus, when the assessee sells the goods and paid the VAT Tax thereon, the buyer of the goods become the debtor of the assessee and any receipts of money / recovery of sale consideration is the realization of such debt and thus, provisions of section 69A of I. T. Act cannot be invoked.*

*14. The additions upheld are highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reason relied upon Ld. A.O."*

5. The Id. Authorized Representative submitted that the assessee had sought adjournments on the ground that the assessee's counsel had undergone knee replacement surgery. It was submitted that the medical records of the counsel of the assessee were forwarded along with adjournment letter. However, without considering the same, the Id. First Appellate Authority had passed the ex-parte order. It was submitted that the assessee did not have any intention to delay the proceedings, and therefore, there was no deliberate non-compliance on the part of the assessee but the non compliance and the seeking of adjournments was only for the reason that assessee's counsel had undergone knee replacement surgery. It was submitted that it was for this reason only, that the submissions could also not be filed before the Id. First Appellate Authority. It was prayed that the assessee be provided with another opportunity to present his case so that the interest of substantial justice is met.

6. Per contra, the Id. Senior Departmental Representative opposed the assessee's prayer for setting aside the proceedings.

7. We have heard the rival submissions and have also perused the material available on record. In our considered view, the assessee has duly explained the reason for seeking adjournments before the NFAC and also the reason for non submission of reply before the NFAC. Therefore, on the facts of the case, we deem it appropriate to restore the file to the Office of the Assessing Officer with the direction to adjudicate the issue afresh after giving a proper opportunity to the assessee in this regard. We also direct the assessee to fully cooperate during the set aside assessment proceedings, failing which the Assessing Officer shall be at complete liberty to decide the issue in accordance with law by passing a speaking order even if its 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