

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.354/LKW/2023

A.Ys. 2017-18

Ahibaran, Madhiya Jafar Pur Parsola, Hardoi-241301 PAN AMRPA 2447C (Appellant)	Vs.	Income Tax Officer-3(2), Income Tax Office, Nagheta Road, Hardoi-241001 (Respondent)
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Appellant by	Shri Saurabh Gupta, CA
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	23/01/2024
Date of pronouncement	29/02/2024

ORDER

This appeal has been preferred by the assessee against order dated 21.09.2023 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 assessee had deposited cash to the tune of Rs.30.00 lacs in Gramin Bank of Aryavart, Chhibramau, Hardoi during the demonetization period i.e. between 09.11.2016 and 30.12.2016. The statutory notices were issued from time to time requiring the assessee to submit the relevant details. However,

since no reply was forthcoming from the part of the assessee, the AO proceeded to invoke the provisions of Section 144 of the Income Tax Act, 1961 (hereinafter called the 'Act') and completed the assessment at an income of Rs.39,94,590/-.

3. Aggrieved, the assessee approached the Id. First Appellate Authority challenging the addition. However, the appeal of the assessee was dismissed by the NFAC as the appeal had been filed belatedly by 9 months and 26 days and no delay condonation application had been filed before the Id. First Appellate Authority. Thus, the appeal came to be dismissed as unadmitted.

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

"1. That on the facts and circumstances of the case, the ex-parte Appellate Order passed by the learned Commissioner of Income Tax, (Appeals) NFAC was passed without providing proper opportunity to the appellant, which is against the principles of natural justice and therefore, the same is void ab-initio and bad in law

2. That the learned Commissioner of Income Tax (Appeals) NFAC has erred in law and on facts and circumstances of the case in not condoning the delay attributable to the filing of appeal.

3. That the learned Commissioner of Income Tax (Appeals) NFAC has failed to appreciate the statement of facts and

grounds of appeal filed by the appellant and rejecting the appeal only on the grounds of limitation.

4. That the learned Commissioner of Income Tax (Appeals) NFAC has erred in law and on facts and circumstances of the case in confirming the addition of Rs 39,94,591/- by treating the deposits in bank accounts as Unexplained money u/s 69A of the Income Tax Act, 1961, without even adjudicating the same.

5. That the learned Commissioner of Income Tax (Appeals) NFAC has erred in law and on facts and circumstances of the case in not appreciating the fact that the bank accounts mentioned by the Ld Assessing Officer in the assessment order do not relate to the appellant, making the entire additions and the assessment order infructuous, which renders the entire assessment null and void.

6. That the appellant craves leave to add, alter, amend or withdraw any or all the grounds of appeal on or before the hearing."

5. The Id. Authorized Representative submitted that it was true that the appeal had been filed belatedly before the NFAC but the reason for such delay was death of the wife of the assessee which prevented him from taking proper cause of action in this regard. The Id. Authorized Representative stated at Bar that the fact of death of assessee's wife had disturbed the assessee to the extent that he was unable to look after the day to day affairs of his business. The Id. A.R. also gave an undertaking that if the matter was restored to the NFAC, the assessee shall fully

cooperate during the course of First Appellate proceedings as and when so directed by the NFAC.

6. Per contra, the Id. Senior D.R. opposed the prayer of the assessee.

7. I have heard the rival submissions and have also perused the material on record. Keeping in mind, the statement of the Id. Authorized Representative at the Bar and the undertaking given by him in this regard, I deem it appropriate to restore the file to the Office of the Id. First Appellate Authority and direct the Id. First Appellate Authority to condone the delay in filing of the appeal and proceed to decide the appeal on merits, in accordance with law, after giving proper opportunity to the assessee in this regard.

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

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

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Aks –
Dtd. 29/02/2024

Copy of order forwarded to:

- (1) *The appellant*
- (3) *Commissioner*
- (5) *Guard File*

- (2) *The respondent*
- (4) *Departmental Representative*

Assistant Registrar