

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3033/Del/2023

Asstt. Year: 2017-18

Sandeep Garg, 311, Deepali Chowk, Pitampura, New Delhi – 110 034. PAN AGBPG9204H	Vs.	ITO, Ward 43(8) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	Shri Shantanu Verma, Advocate
Department by:	Shri Piyush Tripathi, Sr. DR
Date of Hearing:	12.02.2024
Date of pronouncement:	22.03.2024

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 29.08.2023 of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [**"CIT(A)"**] pertaining to Assessment Year (**"AY"**) 2017-18.

2. The assessee has raised the following grounds:

- "1. That, the Learned National Faceless Appeal Centre (**"NFAC"**), has grossly erred both in law as well as on facts of the case, in upholding the Order of Assessment passed on November 28<sup>th</sup> 2019, under section 144 of the Income Tax Act, 1961 (**"the Act"**), vide the impugned Order passed u/s 250, on August 29<sup>th</sup> 2023.

2. *That, the Learned NF AC has grossly erred both in law as well as on facts of the case, by upholding the incorrect addition(5) made by the Learned Assessing Officer, amounting to a massive sum of INR 4,31,94,775/-. The Learned Assessing Officer has baselessly made addition(s) u/s 69A of the Act, whereby it has been clearly stated that, an addition can only be made when a person is found to be in possession of money, bullion, jewellery etc. not reordered in his books of accounts. However, in the present case, the sum under consideration was rightly deposited into the bank account. Therefore, the addition(s) made by the Learned Assessing Officer cannot sustain u/s 69A of the Act.*
3. *That, the Learned NFAC has erroneously ignored the fact that, during the course of Assessment Proceedings, the Learned Assessing Officer has only considered the credit entries made into the bank account of the Appellant. On contrary to that, the Learned Assessing did not appreciate the numerous debit entries made within the bank account of the Appellant. In grave consequences to that, the Learned Assessing Officer only acknowledged the inflow of funds and totally overlooked the payments and expenses made by the Appellant for managing the day-to-day business activities. Henceforth, the addition(s) made by the Learned Assessing Officer should be deleted at the earliest, as the same does not represent the precise income/profits generated by the Appellant.*
4. *That, the Learned NFAC has wrongfully disregarded the disclosed income revealed within the return of income furnished by the Appellant. It is humbly submitted that, the Appellant duly uploaded the required ITR on August 30th 2017 and in furtherance to that, an Intimation Order was received on November 04th 2017, accepting the furnished return of income. As a matter of fact, without prejudice and purely as co-operative gesture towards the Income Tax Department, in accordance to the scientific approach and prescribed criterion conferred by section 44AD of the Act, the Appellant will be pleased to consider the income @ 8% on the disputed deposits and thereby, remit legitimate taxes on the ascertained income for the development of our economy. Therefore, the bona-fide submissions of the Appellant should be accepted in the Interests of Justice. Otherwise, the same would provoke immense financial burdens upon an ordinary citizen.*

*Most importantly, the business premises of the Appellant witnessed a temporary closure, as the premises was sealed by the Delhi Pollution Control Committee. After the restoration of business premises, the relevant*

*details and documents inclusive of invoices, stock register, cash book etc... were not detectable.*

5. *That, the Learned NFAC has grossly erred in passing the impugned Order dated 29/08/2023, without providing any proper and meaningful opportunity of being heard. The impugned Order was passed against the principles of natural justice, since it is clearly evident that, the Learned NFAC was in a hurry to dispose of the present matter.*
6. *That, Learned NFAC has erred in law in upholding the Order of Assessment in respect of charging of Interest under Section 234A, 234B & 234C and also the initiation of penalty under section 271AAC and 272A(1)(d) failing to appreciate that, on the facts and circumstances of case, the addition made itself is bad in law as such, charging of interest is and initiation of penalty is unwarranted in law.”*

3. Briefly stated, the assessee is an individual. He is carrying on retail trading business under the name & style of “M/s. G.S. Chemicals”. He e-filed his return for AY 2017-18 on 30.08.2017 declaring income of Rs. 13,57,300/-. His case was selected for limited scrutiny under CASS for the reason “Large Cash deposits in bank account(s) during the year”. Statutory notice under section 143(2) of the Income Tax Act, 1961 (**the “Act”**) was issued on 09.08.2018 which was served upon the assessee from ITBA and e-mail. Thereafter, notice under section 142(1) of the Act was issued on 21.06.2019. In response thereto, the Ld. Assessing Officer (**“AO”**) did not receive any reply. The Ld. AO issued notices under section 142(1) dated 27.08.2019, 09.09.2019 and 21.10.2019 through ITBA which remained uncomplied with. Final opportunity was given vide show cause notice dated 08.11.2019 which was also not complied with. The Ld. AO, therefore made the assessment ex-parte under section 144 of the Act on 28.11.2019 on total income of Rs. 4,45,52,080/- including therein addition of Rs. 4,31,94,775/- under section 69A being the amount of cash deposited during the year in Bank of Baroda.

4. The impugned addition under section 69A was challenged in appeal before the Ld. CIT(A). During appellate proceedings also the Ld. CIT(A) gave several opportunities vide notice of hearing dated 02.02.2021, 04.11.2022, 12.07.2023 and 10.08.2023 but the assessee did not avail them. For non-compliance of notice(s) issued during assessment and appeal proceedings, the Ld. CIT(A) declined to interfere with the order of the Ld. AO and upheld the impugned addition under section 69A of the Act.

5. Aggrieved thereby, the assessee is in appeal before the Tribunal and all the grounds relate thereto.

6. The Ld. AR assailed the impugned addition made by the Ld. AO and confirmed by the Ld. CIT(A). He submitted that the Ld. AO considered the credit entries in the bank account of the assessee but totally ignored the debit entries of payments and expenses incurred for managing day-to-day business activities. It was also brought to our notice that the business premises of the assessee was sealed by the Delhi Pollution Control Committee and that the relevant details and documents inclusive of invoices, stock register, cash book etc. were not detectable after the restoration of business premises.

6. The Ld. Sr. DR supported the order of Ld. AO/CIT(A).

7. We have considered the submission of the Ld. Representative of the parties and perused the records. We are of the view that in the interest of justice and fair play, it would be expedient if the matter is restored to the file of the Ld. CIT(A) for decision on merits, in accordance with law, after allowing reasonable opportunity of being heard to the assessee who will co-operate in the appeal proceedings. We order accordingly.

8. Before parting, in exercise of powers vested under section 254(2B) of the Act, we hereby impose cost of Rs. 10,000/- upon the assessee and direct him to deposit the said sum in Prime Minister Relief Fund and submit proof thereof to the Registry.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the open court on 22<sup>nd</sup> March, 2024.**

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

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 22/03/2024

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	