

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.407/Ind/2023**  
**(Assessment Year: 2016-17)**

Abdul Rajik Indore	vs.	ACIT 4(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: BRQPR4381H</b>		
Assessee by	Shri Arpit Gaur, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.04.2024	
Date of Pronouncement	24.04.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by assessee is directed against the order dated 24.08.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2016-17. The assessee has raised following grounds of appeal:

*“Grounds of Income-Tax appeal before the Hon'ble Income-Tax Appellate Tribunal, Indore Bench, Indore, against the Appellate Order passed under s. 250/147/144 of the Income-Tax Act, 1961 by the learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi, pertaining to the A.Y. 2016-17 in response to the appeal filed against the Assessment*

*Order under s. 147 r.w.s. 144 of the Act, passed by the Assistant Commissioner of Income-Tax, 4(1), Indore.*

*1. That, the learned CIT(A) as well as the ld. AO grossly erred, both on facts and in law, in passing the ex-parte orders without giving proper and effective opportunity of being heard to the appellant.*

*2. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for making an addition of Rs.16,50,900/- in the appellant's income by framing an Assessment Order under s.147 r.w.s. 144 of the Income-Tax Act, 1961, in respect of one PAN: ANTPR4961R without affording proper opportunity of being heard to the appellant, which is quite illegal, bad-in-law and void- ab-initio.*

*3. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the Id. AO for making an addition of Rs.16,50,900/- on account of cash deposits made in the bank account of the appellant by treating the same as unexplained money u/s. 69A of the Act.*

*4. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for making an addition of Rs.16,50,900/- in the appellant's income by framing an Assessment Order under s.147 r.w.s. 144 of the Income-Tax Act, 1961, in respect of one PAN: ANTPR4961R without considering and appreciating the material fact that the appellant has not furnished any return with the aforesaid PAN and had filed his return for the relevant assessment year with the actual PAN: BRQPR4381H wherein the aforesaid cash deposits made in the bank account have duly been taken into consideration by the appellant.*

*5. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs \* 0.16 ,50,900/-made by the ld. AO on account of unexplained cash deposits in bank account without considering*

*the cash withdrawals from the bank account and as also, without considering and appreciating the material fact that the appellant had already considered the subject cash deposits while offering his income under the presumptive scheme of taxation u / s 44AD of the Act in his return of income furnished under s.139 of the Act for the relevant assessment year with the PAN: BRQPR4381H.”*

2. The assessee is an individual and did not file return of income u/s 139. The AO received information regarding the cash deposit of Rs.16,50,900/- in the saving bank account and therefore, issued notice u/s 148 on 18.09.2018 but there was no response on behalf of the assessee to the said notices nor any return of income was filed. The AO also issued reminder for filing the return of income as well as show cause notice to the assessee but assessee did not file any return of income but filed a reply questioning PAN which was referred by the AO in the notices. The AO conducted an inquiry and found that the assessee was holding two PANs and also initiated penalty proceeding u/s 272B for having more than one PAN. Since there was no return of income therefore, the AO left with no option to pass an ex-parte order u/s 144 and framed as best judgment assessment. The assessee challenged action of the AO before the CIT(A) however, there was no compliance to the notices issued by the CIT(A) and consequently the appeal of the assessee was dismissed.

3. Before the Tribunal Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee while passing ex-parte order and confirmed the addition made by the AO on

account of cash deposit of Rs.16,50,900/- as unexplained money u/s 69A of the Act. Ld. AR has further submitted that the AO has not given the details of bank account in which the alleged cash was found deposited and therefore, the assessee was not able to explain source. He has thus pleaded that the assessee be given one more opportunity to present its case. Thus, Ld. AR has pleaded that the impugned order of the CIT(A) be set aside and matter may be remanded to the record of the AO.

4. On the other hand, Ld. DR has raised no objection if the matter is remanded for fresh adjudication.

5. Having considered the rival submissions as well as careful perusal of the impugned order, at the outset, we note that it is a case of no return of income filed by the assessee either u/s 139 or in response to notice u/s 148 of the Act. Even the assessee did not file the return of income despite repeated reminders and show cause notice issued by the AO. The AO has given details of the show cause notice issued in para 2 & 3 as under:

*“2. A reminder to file the return of income was issued on 13.08.2019 electronically, again no compliance was made in this regard. Again, a notice to file the return of income was issued on 21.08.2019 and again no compliance was made. A final show-cause notice was issued on 23.09.2019, and this was also served electronically. But the assessee failed to comply again, and no return of income has been filed by him till date. Again, A final show cause notice was issued to the assessee on 07/11/2019 and this was also served electronically as well as served on him in person. But the assessee in reply to the show cause notice submitted that he is*

*not the same Razik with PAN (ANTPR4961R), he is Abdul Razik with PAN (BRQPR4381H). But, it has been verified from his bank accounts and KYC that both the PAN belongs to the same assessee Shri Razik and he has committed a measure offence of duplication of PAN u / s 272B of the IT Act, 1961. Despite repeated reminders and opportunities, it is seen that the assessee has failed to comply again, and no return of income has been filed by him till date. Thus, it can be seen that sufficient opportunity was given to the assessee to make compliance, and principles of natural justice have been duly followed.*

*3. Since the assessee has failed to comply and has not filed his return of income, despite a lapse of around 7 months since issuance of notice u / s 148 and multiple reminders and opportunities, the under-signed is left with no option but to pass an ex-parte order u / s 144 of the IT Act, i.e. a "best-judgment" assessment."*

5.1 Though the assessee has questioned the PAN which was mentioned by the AO in the notices/show cause notice however, the AO verified from the bank account and KYC documents that both PAN belongs to the assessee and he has violated the provisions of section 272B of the Act. This shows the negligent and evasive attitude of the assessee. On appeal the CIT(A) has given details of nine notices in para 5 as under:

*"5. During the course of appellate proceedings, various hearing notices u/s.250 issued to assessee's registered mail ID: casudhirluhadiya@gmail.com. However, assessee has not made compliance to any of the hearing notices. Details of the notices are as under:*

Sr. No.	Date of issue of Hearing Notice	Date of Hearing	Remarks
1	12.01.2021	27.01.2021	No compliance
2	04.03.2021	19.03.2021	No compliance
3	10.06.2021	25.06.2021	No compliance
4	20.10.2021	04.11.2021	No compliance
5	07.12.2021	22.12.2021	No compliance
6	17.01.2022	01.02.2022	No compliance
7	22.04.2022	29.04.2022	No compliance
8	25.10.2022	03.11.2022	No compliance
9	26.07.2023	10.08.2023	No compliance

4.2 Since the notices were issued to the assessee registered E-mail ID and not to the E-mail ID given by the assessee in form 35 therefore, the communication of these notices issued by the CIT(A) are not in accordance with the provisions of section 282 r.w. Rule 127 of Income Tax Rules 1962. Thus as per the Rule 127 of the

Income Tax Rules 1962 the notices, order etc. shall be delivered or transmitted to the address given, for the purpose of communication, to the income tax authority or any person authorized by such authorities issuing communication. Therefore, when the assessee has given Email ID in form 35 then the notices shall be communicated/transmitted to the E-mail ID given by the assessee in form 35 and not to the e-mail- ID registered with the PAN of the assessee. Accordingly in the facts and circumstances of the case when the notice issued by the CIT(A) was not transmitted /delivered to e-mail-ID given in form 35 then the service of the alleged notices issued by the CIT(A) is not in accordance with the provisions of law. Hence, in the interest of justice we set aside the impugned order of the CIT(A) and matter is remanded to the record of the jurisdictional AO for deciding the same afresh after giving to the assessee the details of the bank account in which the cash of Rs.16,50,900/- was found deposited.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24. 04.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 24 .04.2024**

**Patel/Sr. PS**

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*