

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2908/Del/2023
[Assessment Year : 2017-18]**

Prabhdeep Singh Sandhu, Khera Sujatganj Beganbad, Rampur, Uttar Pradesh-244901. PAN-EOMPS7371G	vs	ITO-1(3), Rampur-2, Rampur [U.P].
APPELLANT		RESPONDENT
Appellant by	Shri Prashant Kacker, CA	
Respondent by	Shri Om Parkash, Sr. DR	
Date of Hearing	30.04.2024	
Date of Pronouncement	09.05.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 29.09.2023 for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

- I. *“On the facts and circumstances of the case and in law the Learned Commissioner of Income tax (Appeals), erred in confirming the addition of 19,01,610.00.*
- II. *The Appellant respectfully, submits as under:*
 1. *The Learned Commissioner of Income Tax Appeals, National Faceless Appeal Centre, Delhi (CIT-A) has without going into the facts has sustained addition aggregating to 19,01,610.00.*
 2. *The Ld.CIT-A has sustained addition of 19,01,610.00 u/s 69A of the Act contrary to law and facts.*

3. *That the order is bad in law, not in agreement with facts and is against the principles of natural justice.*

III. *The Appellant craves leave to add, alter, amend, and/or to modify any Grounds of appeal, if necessary.”*

3. Facts giving rise to the present appeal are that the case of the assessee was taken up for scrutiny. In response to the statutory notices, there was no representation on behalf of the assessee. The reason for taking up the case of the assessee for scrutiny is stated to be deposit of cash in his saving bank accounts held with Oriental Bank of Commerce. The Assessing Officer (“AO”) issued a final show cause notice dated 29.05.2019 to the assessee. In response to the show cause notice dated 29.05.2019, the assessee furnished bank statement and other details which were examined by the AO and thus, he made best judgement on the basis of material available on record. The AO while framing the assessment u/s 144 of the Income Tax Act, 1961 (“the Act”) vide order dated 22.11.2019, assessed the income of the assessee at INR 19,01,610/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). There was no compliance with the notice of hearing by the assessee issued by the Ld.CIT(A). Therefore, Ld.CIT(A) sustained the finding of AO and dismissed the appeal *ex-parte* to the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee submitted that the authorities below failed to provide adequate opportunity of being heard

to the assessee. Ld. Counsel for the assessee contended that the authorities below failed to consider the facts in right perspective. He submitted that it was stated before the AO that the assessee is an individual and is a farmer. He is having income from agriculture and small income from other sources. He contended that the AO treated the income earned from sale of Poplar Trees amounting to INR 7,00,000/- as unexplained. He further contended that a sum of INR 2,01,609/- was treated as undisclosed agricultural income and INR 10,00,000/- out of bank withdrawals was also treated as unexplained. He contended that the assessee had provided all the details to the lower authorities but without verifying and making due inquiry, proceeded to make addition. Ld. Counsel for the assessee placed reliance on the decision of the Co-ordinate Bench of the Tribunal in the case of **Mukesh Kuamr Mahawar vs ITO in ITA No.615/LKW/2014 [Assessment Year 2009-10]** order dated **16.09.2015**. He further placed reliance on the judgement of the Hon'ble Supreme Court in the case of **Brij Bhushan Lal Parduman Kumar vs CIT [1978] 115 ITR 524 (SC)** in support of his contentions.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. Ld. Sr. DR contended that it was incumbent upon the assessee to prove the source of credits in the bank account. It was incumbent upon the assessee to prove the source and nature of cash deposits. He submitted that since no such explanation was offered by the assessee hence, the AO was justified in making additions.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities

below. It is noticed that the AO has passed the impugned assessment u/s 144 of the Act on the basis of material available on record and Ld.CIT(A) dismissed the appeal *ex-parte* to the assessee without advertng to the merit of the case. In our considered view making of best judgement, assessment u/s 144 of the Act is not merely ritual to be performed but it casts statutory duty on the AO for making independent verification of the material placed by the assessee. In the present case, it is stated by the assessee that during the year, he had sold the Poplar Trees and the AO without conducting any inquiry, rejected the claim of the assessee. Therefore, looking to the totality of the facts, we are of the considered view, that in the interest of principle of natural justice, the assessee should be given adequate opportunity for explaining the source of credits made in his bank account. We therefore, set aside the impugned order and restore the assessment to the AO for verifying the correctness of claim of the assessee that during the year, he had sold Poplar Trees and also, there were withdrawals from the bank account which was used for impugned deposits. The AO after giving reasonable opportunity of being heard to the assessee, would frame the assessment afresh. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 09th May, 2024.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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