

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI S RIFAUR RAHMAN ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 2254/Del/2023
(Assessment Year- 2017-18)**

Rajeev Kumar Sharma, B-127, Hardev Puri, 100, Feta Road, Shahdara, New Delhi-110093.	Vs.	Income Tax Officer, Ward 59(7), Vikas Bhawan, New Delhi-110002.
PAN No: AITPS1912L		
APPELLANT		RESPONDENT

Assessee by : Shri A K Srivastava, FCA
Revenue by : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 14.05.2024
Date of Pronouncement : 31.05.2024

ORDER

PER SUDHIR PAREEK, JM

This appeal by Assessee is directed against the order of National Faceless Appeal Centre , Delhi [for short hereinafter referred to as the “(NFAC)”]/ CIT(A) dated 14.03.2023 for Assessment Year 2017-18 on the following grounds of appeal: -

“1. That on the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) erred in confirming the order passed by the Income Tax Officer, u/s 144 of the Act, by which an addition of Rs. 1,94,49,000/- was made as unexplained cash deposited by assessee in his bank account.

2. That on the facts and circumstances of the case and in law the order passed by the Learned Commissioner of Income Tax (Appeals) is bad in law, as it has been passed, ignoring the assessee's request for granting further time to make submissions and filing evidences, which were being collected and compiled and thus denying natural justice.

3. That the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the order passed by the Income Tax Officer is erroneous, contrary to the facts and circumstances of the case, that the Assessing Officer failed to appreciate the nature of assessee's business and the assessment order is based on surmises and conjectures. The same is against law and principles of natural justice and thus erroneous and unsustainable.

4. That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) ought to have held that the assessee having disclosed the cash deposited in bank, being the sale proceeds, the provisions of sections 68 and 115BBE of the Act are not attracted.

5. Without prejudice to the above, the Learned Commissioner of Income Tax (Appeals) ought to have held that on facts and in law, the levying of interest under section 234B and 234C of the Act, is not called for, calculation is wrong and the levying of interest is bad in law.

6. The above "Grounds of Appeal" are all independent and without prejudice to one another.

7. The Appellant also craves leave to add, alter, amend, supplement and/or otherwise alter vary, modify or delete any ground of the appeal stated hereinabove before or at the time of hearing.”

2. Brief facts of the case may be summarized as that the assessee is engaged in the business of distributorship of electronic items. The assessee has filed its return of income declaring total

income of Rs. 12,13,980/- on 31.10.2017. The case was selected for scrutiny under CASS with chief reason to verify the “Cash deposit during the demonetization period”. The notices u/s 142(1) of the Act with questionnaire were issued to assessee to draw details, on various dates through ITBA portal and delivered upon assessee on his user Id. However, assessee has not produced any details in support of these cash deposits during demonetization or in justification of availability of Cash in Hand.

3. At the outset, the Ld. CIT(A) dismissed the assessee’s appeal by stated that the appellant / assessee claimed the cash deposits in their bank account were from sales of electronic goods but failed to provide evidence to show the nexus between the cash deposited in the bank and cash sales made. It is true that appellant has made a sweeping statement for the relevant previous year 2016-17 and submitted the details of cash deposited for the previous year 2016-17 and submitted the details of cash deposited for the previous year 2015-16 and for the year 2017-18 without any evidence to substantiate its claim. The appellant / assessee did not provide the necessary evidence to the AO or during the appeal. Consequently, the addition of Rs. 1,94,49,000/- made by the AO

was confirmed, and the appeal was dismissed. The Ld. Assessing Officer submitted that the assessee neither appeared in person nor filed any documents in response to final show cause notice. From the conduct of assessee it appears assessee has no documentary evidence to justify the cash deposits made by him during FY 2016-17.

4. However, the Ld. Counsel for the assessee stated that the appeal has been dismissed by Ld. CIT(A) by ignoring the assessee's request for granting further time to make submissions and filing evidences, which were being collected and complied and thus denying natural justice and the appeal has been dismissed without giving fair & meaningful opportunity to the assessee of being heard.

5. Heard rival submissions and carefully scanned the material available before us.

6. We have carefully considered the order of the CIT(A). We find that the appeal had been dismissed due to the assessee's failure to appear or provide documentary evidence in response to the final show cause notice.

7. Per contra, Learned Departmental Representative (hereinafter referred to as 'Ld. DR') relied on the order passed by both lower

authorities and stated that sufficient opportunity provided to assessee before passing impugned orders.

8. By hearing both side and perusing material placed before us, we are of the humble opinion that justice should not only done but it appears to be done and in order to achieve the noble goal of justice and before reaching any conclusion it is expedient to consider, all the material/ documents in existence and produced and whatever it is, if one more opportunity provided to assessee /appellant, object of justice will be served to some extent. Thus, for this purpose, we are inclined to remit back the matter to Ld. AO with the direction to decide afresh.

9. Consequently, matter is remitting back to the Ld. AO with the direction to decide the matter afresh after affording more effective, meaningful and sufficient opportunity of being heard to the assessee. At the same time, assessee / appellant shall co-operate in proceedings and will not seek unnecessary adjournments for ensuring expeditious disposal of the matter. Assessee / appellant is at liberty to file / submit any documents / evidence etc. in support of his claim.

10. In the result, this appeal is allowed as indicated above for statistical purpose.

Order pronounced in the Open Court on 31.05.2024

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 31/05/2024.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.5.24
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	