

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.379/LKW/2023
Assessment Year 2017-18

Mohd. Farhan, 137 First Floor Lekhraj Khajana, Indira Nagar, Lucknow. PAN AAXPE 2495D	Vs.	Income Tax Officer-1(2), Lucknow-New
(Appellant)		(Respondent)

Appellant by	Shri A.P. Sinha, Advocate
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	05/03/2024
Date of pronouncement	29/04/2024

ORDER

1. This appeal has been preferred by the assessee against order dated 10.10.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is a proprietorship concern under the name and style of M/s. Health Care Solution registered in Commercial Tax Department. The assessee has not filed return of income for the year under consideration. Notice u/s. 142(1) of the Income Tax Act, 1961

(hereinafter called the 'Act') was issued calling the assessee to file his ITR for the Assessment Year 2017-18 but no Income Tax Return had been filed. The Assessing Officer also issued various notices to the assessee but assessee had not furnished any reply/return. Under these circumstances, the Assessing Officer passed the assessment order u/s 144 of the Act and made addition of Rs.9,91,500 /- u/s. 69A of the Act and Rs.4,24,080/- under profit estimated at the rate of 8%.

3. Aggrieved, the assessee preferred an appeal before the ld. First Appellate Authority. However, here again, in spite of numerous opportunities, as enumerated in the appellate order, no response was forthcoming from the side of the assessee and the assessee's appeal came to be dismissed in limine by the ld. First Appellate Authority.

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

"1. That the L.D CIT(Appeals) erred in law in absolutely violating the principles of Natural Justice, the appellant has not been allowed any adequate opportunity of being heard and therefore the Appellate Order deserves to be declared a nullity

2. That the L.D CIT(Appeals) had issued the notices on the E-Mail ids which were not in operation of the appellant. The appellant had updated his contact details and E-Mail Id on the Income Tax Portal on 14 December 2021, however still the notices were being sent by the Hon'ble CIT (Appeals) on the Old E-Mail Ids which were not in operation by the appellant. The appellant had thus been denied an opportunity of being heard as no notices were being received by him.

3. That the E-Mail Ids updated on the Income Tax Portal were "gaurav9956090197@gmail.com" and caankur2013@gmail.com however no notices were sent to any such e-mail id. The E-Mail Ids on which the notices were being sent were rohit. 17mishra@ gmail.com and avi2281@yahoo. co.in which were not in operation of the appellant.

4. That the L.D CIT(Appeals) erred in law as well as on facts in treating the entire cash deposit made in the bank account of the appellant as income of the appellant.

5. That the L.D CIT(Appeals) erred in law as well as on facts in treating the entire bank transfers as income of the appellant.

6. That the L.D CIT(Appeals) erred in law as well as on facts in not considering the fact that cash deposits in the bank accounts of the appellant formed part of the regular business activities of the appellant.

7. That the L.D CIT(Appeals) failed to consider the fact that "Cash Deposits" were made in the bank accounts of the appellant in the earlier as well as subsequent assessment years and thus formed part of the regular business of the appellant.

8. That the L.D CIT(Appeals) failed to consider the fact that "Cash Deposits" were made in the bank accounts of the appellant in the post as well as pre demonetization period and thus the same formed part of the regular business of the appellant.

9. That the L.D CIT(Appeals) erred in law as well as on facts in not considering the corresponding debits in the bank accounts which were through cash withdrawal as well as through banking channels which represented the expenses/payments made for purchases.

10. That the L.D CIT(Appeals) erred in law as well as on facts in considering the credits on account of loan taken from bank as the income of the appellant.

11. That the order appealed against is contrary to the facts, law, principals of natural Justice and equity.

12. The appellant craves for leave to add, modify, amend or delete any other and further grounds of appeal with permission.”

5. The ld. AR prayed that an opportunity may be granted to the assessee to explain his case before the Assessing Officer (AO).

6. The ld. D.R. had no objection to the restoration of appeal to the AO.

7. I have heard both the parties and have also perused the material on record. It is evident that there was complete non compliance on the part of the assessee during the course of first appellate proceedings. However, looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the AO with the direction to provide one more opportunity to the assessee to

present his case and I also caution the assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

8. In the final result, the appeal filed by the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 29/04/2024)

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Aks –
Dtd. 29/04/2024

Copy of order forwarded to:

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|--------------------------|--|
| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>Departmental Representative</i> |
| (5) <i>Guard File</i> | |

Assistant Registrar