

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.402/LKW/2023
Assessment Year 2017-18

Sanjay Gupta, Shop No. 179/1 Maharajganj, Utraula Road PO Bus Station, Gonda 271001 PAN AIEPG 6669F	Vs.	Income Tax Officer, Gonda-New
(Appellant)		(Respondent)

Appellant by	Ms. Shweta Mittal, CA
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	16/04/2024
Date of pronouncement	29/04/2024

ORDER

1. This appeal has been preferred by the assessee against order dated 31.10.2023 passed by the ld. Commissioner of Income Tax, (Appeal), Delhi for the Assessment Year 2017-18.

2. The brief facts of the case are that the e-return of income for the captioned year was filed declaring total income at Rs.2,88,340/-. The assessee's case was selected for scrutiny through CASS. The assessment was completed u/s. 144 of the

Income Tax Act, 1961 (hereinafter called the 'Act') at a total income of Rs.11,84,860 /- as there was non-compliance by the assessee during the assessment proceedings.

3. Aggrieved, the assessee approached the ld. First Appellate Authority challenging the said addition. However, again, there was no compliance by the assessee and, therefore, the appeal of the assessee came to be dismissed by the ld. CIT(A).

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

"1. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order, which is unlawful, unjustified and against the principles of natural justice.

2. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order without giving adequate opportunity of being heard

3. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts in passing the order without taking cognizance of documents on record and treating cash deposits of Rs. 5,68,500/- during demonetization as unexplained cash credit u/s 69A of Income-tax Act and computing tax liability on the same u/s 115BBE of Income-tax Act

4. The Ld. Commissioner of Income-tax (Appeal) has erred in law and on facts and made the intangible addition of net profit of Rs. 328024/-, whereas Assessee books of accounts had duly audited by chartered accountants.

5. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing assessment order which is contrary to the facts and law.”

5. The Ld. A.R. prayed that one more opportunity may be afforded to the assessee so as to enable him to present his case before the Assessing Officer (AO).

6. The ld. D.R. had no objection to the restoration of appeal to the file of 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 result, the appeal of 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