

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.99/LKW/2024  
A.Ys. 2017-18

Shashi Gupta, Kanpur PAN ACFPG 1367B	Vs.	Income Tax Office-1(1)(4), Kanpur
(Appellant)		(Respondent)

Appellant by	None (Adj. Application filed)
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	10/04/2024
Date of pronouncement	29/04/2024

**ORDER**

This appeal has been preferred by the assessee against order dated 19.01.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi for Assessment Year (AY) 2017-18 wherein, the assessee's appeal has been dismissed in limine for the reason of non compliance.

2. The brief facts of the case are that the assessee is an individual carrying on business of 'Kirana and Jari Buti' as a proprietorship concern under the name and style of 'M/s S.H. Sales, Kanpur'. The Assessing Officer issued notice u/s. 142(1) of the Income Tax Act, 1961 (hereinafter called the 'Act') on 13.12.2018 requiring the

assessee to file the return of income for the year under consideration. Since the assessee did not file her return of income, the Assessing Officer issued another notice u/s. 142(1) of the Act on 22.05.2019 which also remained uncomplied. Under these facts and circumstances, the Assessing Officer completed the assessment ex-parte and made addition of Rs.8,73,818/- and also initiated penalty proceedings u/s. 271F of the Act.

3. Aggrieved, the assessee preferred an appeal before the ld. First Appellate Authority. However, here again, in spite of various 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. Because on proper consideration of facts and circumstances of the case an addition of Rs.8,73,818/- as unexplained cash credit into the total income of the Assessee assuming the cash sales during demonetization period as bogus sales is highly arbitrary, unjustified, unwarranted, reason assigned is neither factually correct nor justified, no relations with the determination of impugned bogus sales and facts & explanations submitted in response to show*

*cause notice has not been correctly and properly appreciated by the Assessing Authority, therefore is liable to be deleted.*

*2. Because learned First Appellate Authority has not properly and correctly appreciated the replies and submissions filed in response to show cause notice. On the basis of presumption and conjecture and without assigning adverse specific justified material, the cash sales during demonization period has been treated by him as bogus sales wherever all the cash sales are well recorded into the books of accounts inclusive of cash book. The assumption without any reasonable basis is not sustainable in the eyes of law. Cash sales treated as bogus and determined as "Unexplained Cash Credit" u/s 69A of I.T. Act, 1961 is not justified. The addition into total income amounting to Rs.8,73,818/ is liable to be deleted.*

*3. Because assumption of alleged bogus sales during demonization period amounting to Rs.8,73,818/- is neither factually correct nor justified in as much as upon the following grounds-*

*(i) The assumption of bogus sales as unexplained cash credit is based on presumption and conjecture without assigning any justified adverse material.*

*(ii) The cash deposit into Bank Account amounting to Rs. 12,30,000/- during demonization period is well explained and accounted for into the books of accounts.*

*The cash is deposited out of withdrawn from cash book in respective dates. The cash flow in cash book is well explained and verifiable.*

*(iii) The books of accounts including cash book were produced before the Assessing Authority i.e. Income Tax Officer 1(1)(4) for examination and verification. No defect or any adverse material is found by Assessing Authority during the course of examination as to how the cash sales are not explained and verified. All the cash sales have been made on account of trading activities and out of stock available with the Assessee firm.*

*(iv) That assessee's Proprietorship firm namely M/s S.H. Traders is registered with the Commercial Tax Department*

*under U.P. Vat Act, 2008. During the Financial year under consideration i.e. 2016-2017 relevant to the Assessment 2017-2018, the entire vat returns is filed. Purchases and sales details as required have been incorporated therein. The commercial tax department has accepted the purchases and sales disclosed by the Assessee's Proprietorship Firm.*

*(v) That the reasons recorded in the Assessment order is neither justified nor relevant for the purpose of determination of bogus sales as alleged by him. The monthly pro rata of cash sales are not possible to be compared with each month(s). Similarly during the year under consideration and in last proceeding year comparison of cash sales justification is also not correct. The sales or cash sales is a part of business activities and may be happens at any point of time. It may not be treated as tradition in business activities. Depends upon various market factors i.e. demand and supply, availability of goods etc. The material important is that if sale is accounted for into books of accounts, from trading stock available with the Assessee, as to how it may be assumed as bogus without any concrete evidence in possession with the*

*4. Because learned First Appellate Authority has not properly appreciated and considered the facts and submissions placed before him in Statement of Facts and Grounds of Appeal.*

*5. Because Hon'ble Tribunal(s) and High Courts have delivered several judgment(s) to this effect. In case of Raj Kumar (M/s Radhika Sales Corp) Dhab Wasti Ram vs ITO 3(3), Amritsar ITA 195/Asr /2022 it was held that "the AO has no right to calculate sales on hypothetical basis ignoring the evidence submitted during the course of assessment proceedings in the form of VAT return, purchase bills and quantitative details. Once the amount is declared as turn over cannot be called concealed income and be taxed doubly on same amount".*

*6. Because in any case and under all the facts and circumstances of the case an addition of Rs. 8,73,818/- as "unexplained cash credit" on account of bogus sales as alleged by the assessing authority in the Books of the Assessee's firm is neither factually correct nor justified, therefore is liable to be deleted."*

5. None was present for the assessee when the appeal was called out for hearing. However, an application dated 09.04.2024 seeking adjournment was placed before me citing the reason that the counsel of the assessee was out of town to attend the cremation of one of his relatives. However, looking into facts of the case, I reject the adjournment application and proceed to adjudicate the appeal.

6. The ld. Senior D.R. had no objection to the restoration of appeal to the file of the Assessing Officer (AO).

7. I have heard Senior Departmental Representative 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 her 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 her 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:*

(1) *The appellant*  
(3) *Commissioner*  
(5) *Guard File*

(2) *The respondent*  
(4) *Departmental Representative*

Assistant Registrar