

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.93/LKW/2024
A.Y. 2017-18

Vijay Kumar Agarwal, Jubliganj, Station Road, Nanpara, Bahraich PAN AGYPA 3333Q	Vs.	The Income Tax Officer-1, Bahraich.
(Appellant)		(Respondent)

Appellant by	None present for the assessee
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	09/04/2024
Date of pronouncement	29/04/2024

ORDER

This appeal has been preferred by the assessee against order dated 28.04.2023 passed by the Id. Commissioner of Income Tax (Appeal) [hereinafter called the 'CIT(A)'], Lucknow-3 for the 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 running a small restaurant and trading in different merchandise on retail basis. In this case, the Police and Swat team had seized

Rs.4,77,000/- in new currency notes of Rs.2000/- and Rs.500/- denomination and old currency of different denomination of Rs.63,010/- and Rs.75,940/- in Nepali currency. Thus, the total amount of Rs.5,40,000/- was seized in Indian currency. A notice u/s. 153A of the Income Tax Act, 1961 (hereinafter called the 'Act') was issued, in response to which, the assessee had filed his return of income on 01.11.2018 showing total income at Rs.2,99,850/-. Notice u/s. 143(2)/142(1) of the Act was issued to explain the source of cash seized. After considering the submissions of the assessee, the Assessing Officer made an addition of Rs.5,40,000/- to the total income of the assessee and completed the assessment at the total income of Rs.8,39,850/-.

3. Aggrieved, the assessee preferred an appeal before the Id. First Appellate Authority. However, 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 Id. First Appellate Authority.

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

“(1) The Ld. C.I.T. (A) failed to appreciate that there was a reasonable cause for not making any compliance in the appellate proceeding as Assessee was not familiar with e-proceedings and living in remote area.

(2) The Ld. C. I. T. (A) failed to appreciate that Rs. 5,40,000/- being Cash in New Currency seized on 17.12.2016 is business receipts being Sale of Tea, Agarbatti, General Items and Restaurant Receipts. Thus, no addition should be made u/s 69A of I. T. Act.

(3) The Ld. C.I.T. (A) failed to appreciate that the nature of the business is the same as carried out in earlier year and during this year the turnover of the Assessee on under section 44AD of I. T. Act was also accepted by Ld. A. O. However, without appreciating that Rs. 5,40,000/- being Cash in hand was available which is collection of Sundry Debtors, Cash Sales and Restaurant Sales.

(4) The Ld. CIT(A) failed to appreciate that in "Statement on Oath" and also the consolidated submissions made during Assessment Proceeding, it was explained that the Assessee is engaged in the business of Restaurant and sale of miscellaneous items being Agarbatti and general goods etc. The total turnover during A. Y.-2017-18 is Rs. 10,03,556/- which consists Sale Rs. 6,56,890/- and Restaurant Sale Rs. 3,46,666/-. Further, during this year, due to serious illness of Assessee and thereafter his mother the business of the Assessee was also closed for more than three and half months in earlier months.

(5) The Ld. CIT(A) failed to appreciate that Ld. A. O. accepted turnover u/s 44AD Rs. 10,03,556/- hence no addition w. r. t. Rs. 5,40,000/- being Cash found on 27.12.2016 in new currency should be added u/s 69A of I. T. Act as the same is available out of sale proceeds, restaurant proceeds and collection from Sundry Debtors.

(6) The Ld. CIT(A) did not appreciate that Ld. A.O. in computing tax @ 60% without considering that the provisions of Section

115BBE were not invoked and also penalty proceedings u/s 271AAC were also not initiated. Accordingly, as per Law Tax at normal slab rate should have been computed

(7) The addition upheld is highly excessive, contrary to the facts, law and Principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by Ld. C.I.T. (A).”

5. None was present when the appeal was called out for hearing nor was there any adjournment application on record. However, looking into the facts of the case, I deem it appropriate to proceed with the adjudication of this appeal ex-parte qua the assessee.

6. At the outset, it was noted that the appeal filed by the assessee is barred by limitation by 241 days. The assessee has submitted an application for condonation of delay in filing the appeal stating therein that the assessee does not know English and has no knowledge of computer. It has been further submitted that since the assessee's mother was serious, he could not plead the case and subsequently the assessee's mother has also died. Under these circumstances, the appeal was filed late by 241 days. It has been prayed that the delay caused in filing the appeal is not deliberate and beyond the control of the assessee which may please be condoned and appeal be heard on merits.

7. Per contra, the ld. Senior Departmental Representative had no objection to the delay being condoned.

8. I have heard the ld. Departmental Representative and have also perused the materials available on record. From the perusal of application for condonation of delay, I find that the reason for not filing the appeal within the stipulated time is genuine and beyond the control of the assessee. Therefore, I condone the delay of 241 days and admit the appeal for hearing.

9. I have perused the 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 ld. CIT(A) 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 ld. CIT(A) in the set-aside proceedings when called upon to do so, failing which, the ld. CIT(A) 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.

10. 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