

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.123/Del/2024

निर्धारणवर्ष/Assessment Year: 2017-18

HASSAN MAHABOOB S/o Islam Village Mohammad Pur Rai, Kairana Shamli, Uttar Pradesh.	बनाम Vs.	INCOME TAX OFFICER, Ward-3(1)(4), SHAMLI, Uttar Pradesh.
PAN No.BBBPM4711K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Sh. Ankit Gupta, Adv.
Revenue by	Sh. Narpat Singh, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	02.05.2024
उद्घोषणाकीतारीख/Pronouncement on	21.06.2024

आदेश / O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 29.11.2023 for the AY 2017-18 in sustaining the addition made u/s 68 of the Act in respect of the cash deposits made into the assessee's bank account.

2. The assessee in his appeal raised the following grounds:

1) *“That, the NFAC has erred in dismissing the appeal of assessee without providing the adequate*

opportunity of hearing and deciding the appeal in ex-party manner, without appreciating the material available on record.

2) That, the NFAC has not appreciating the fact, that, the assessment order passed U/s 143(3) by the assessing officer is bad in law and passed without providing the adequate opportunity of hearing to the assessee on the adverse material used by the assessing officer for making the alleged addition, which is against the principle of natural justice, hence, the order passed is illegal and without jurisdiction.

3) That, the NFAC has erred in confirming the additions/ disallowances made by the AO, which are illegal, unjust, highly excessive and are not based on any material on record. The total income of the Appellant has been wrongly and illegally computed by the Assessing Officer at Rs.40,08,030.00 alongwith Agriculture Income at Rs. 1,50,000.00 as against income declared at Rs.3,17,470.00 alongwith Agriculture Income at Rs. 1,50,000.00.

4) The Assessing Officer has erred in making the addition of Rs.36,90,500.00 to the income of the assessee on account of Unexplained Cash Deposit in his Bank Account applying provision of section 68, which is illegal, arbitrary and against the facts and circumstances of the case, the NFAC has erred in confirming the same.

5) That, the NFAC has erred in not appreciating, that, the provision of section 68 is not applicable on the CASF1 deposit, in the bank account, therefore, the addition made U/s 68 is illegal, bad in law and without jurisdiction.

6) That the impugned Assessment Order passed by the Assessing Officer are against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

7) The additions made and the observations made are unjust, unlawful and based on mere surmises and

conjunctures. The additions made cannot be justified by any material on record and also excessive.

8) The explanation given in the evidence produced, material placed that has been made available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.

9) The Appellant, craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”

3. At the time of hearing, the Ld. Counsel for the assessee submitted that the Ld.CIT(A) passed *ex parte* order without providing adequate opportunity to the assessee to furnish the evidences and the explanations. Therefore, it is the submission of the Ld. Counsel that the matter may be restored back to the file of the Ld.CIT(Appeals) for deciding the issues afresh after providing adequate opportunity to the assessee.

4. Ld. DR has no serious objection in restoring the matter back to the file of the Ld.CIT(A) for deciding afresh.

5. We have heard the rival contentions, perused the orders of the authorities below. On perusal of the Ld.CIT(A)'s order, it is observed that notices were issued to the assessee fixing the date of hearing on 12.01.2021, 01.11.2023, 10.11.2023 and 21.11.2023. It is observed that the assessee sought time on 21.01.2021 and

17.11.2023 and on other two occasions the assessee did not reply. The Ld.CIT(A) passed the order on 29.11.2023 sustaining the addition observing that there was no adequate response from the assessee. On perusal of the dates of hearing suggests that the Ld.CIT(A) required the assessee to respond on several dates with a short span of time in the month of November. It is the observation of the Ld.CIT(A) that the assessee sought time on two occasions and the assessee could not respond. Taking the totality of facts into consideration this appeal is restored to the file of the Ld.CIT(A) to decide afresh after providing adequate opportunity of being heard to the assessee. The assessee is directed to cooperate with the proceedings with the Ld.CIT(A) without seeking adjournments without reasonable cause.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21/06/2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 21/06/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi