

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1132/Del/2024  
[Assessment Year : 2017-18]**

Shri Jain Samaj Shahdara, Digamber Jain Mandir, Jain Mandir Gali, Chotta Bazar, Shahdara, Delhi-110032. <b>PAN-AAFAS4145J</b>	vs	ITO, Ward -58(7), Vikas Bhawan, I.P.Estate, Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Saurav Rohtagi, Adv.	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	13.06.2024	
<b>Date of Pronouncement</b>	21.06.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 16.01.2024 for the Assessment Year (“AY”) 2017-18.

2. The assessee has raised following grounds of appeal:-

1. *“That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in passing and sustaining order U/s. 144 of the I.T. Act 1961.*
2. *That under the fact & circumstance, Ld. CIT(A) erred in law in not providing the reasonable opportunity of being heard and deciding the appeal ex-parte.*
3. *That under the fact & circumstance, Ld. CIT(A) erred in law in not quashing the Asstt. Order since reasonable opportunity of being heard not provided by Ld. A.O. and passed ex-parte Asstt. order.*

4. That under the fact & circumstance, Ld. A.O. as well as Ld. CIT(A) erred in law in making and sustaining addition of Rs. 25,91,844/- U/s. 69A of the I.T. Act. being cash deposited in bank during F.Y. 2016-17.”

3. Facts giving rise to the present appeal are that the case of the assessee was selected for scrutiny assessment on the basis of deposits of cash in its bank account of INR 20,15,144/- during the period of demonetization and non-filing of Income Tax Return (“ITR”) for the AY 2017-18. The statutory notices issued were not complied by the assessee during the assessment proceedings. Therefore, the Assessing Officer (“AO”) proceeded to frame the assessment after giving final opportunity to the assessee. The AO made addition of INR 25,91,844/- as income of the assessee u/s 69A of the Income Tax Act, 1961 (“the Act”). Thus, assessment was made at INR 25,91,844/- i.e. the entire cash deposits during the Financial Year.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who sustained the addition made by AO *ex-parte* to the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee contended that both the orders passed by the lower authorities are *ex-parte* to the assessee. The assessee was not given sufficient and meaningful opportunity to explain the true and correct facts. Further, he submitted that the assessee may be given sufficient opportunity in the interest of justice. He submitted that even otherwise also on merit, the additions so made by the AO

are unsustainable and the addition has been made u/s 69A of the Act. He submitted that the condition precedent for applying the provision of section 69A of the Act, are that the assessee should have been found to be owner of any money and same is not recorded in the books of accounts of the assessee, maintained by him for any source of income. It is not the fact in the present case as per the AO, the amount was found to be credited in the bank account of the assessee. Therefore, the provision of section 69A of the Act, could not be made applicable.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He submitted that the assessee was given sufficient opportunity and the assessee failed to explain the source of the money credited in his bank account. Therefore, in the absence of any explanation by the assessee, the authorities below were justified in making and sustaining the impugned addition. He contended that the provision of section 69A of the Act, has been correctly applied by the AO.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The assessee has taken multiple grounds in respect of the validity of the assessment and also sustainability of the impugned addition. It is also argued that the assessee was not given sufficient opportunity by the authorities below. I find that the authorities below have given adequate opportunity of hearing to the assessee. The assessee failed to avail such opportunities. It is the case of the assessee that impugned addition could not have been made as

the lower authorities, failed to appreciate the facts in right perspective and consider the explanation offered during the assessment proceedings. The contention of the assessee is that the lower authorities have erroneously applied the provision of section 69A of the Act and without considering the contention of the assessee and made the impugned addition. Admittedly, the impugned orders have been passed *ex-parte* to the assessee. I therefore, looking to the totality of the facts and to sub-serve the substantial justice, hereby, set aside impugned order and restore the assessment to the file of AO to verify the correctness of the claim of the assessee about the source of cash deposits in the bank account of the assessee and decide the issues and make assessment afresh in accordance with law. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21<sup>st</sup> June, 2024.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI