

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.454/PUN/2024  
निर्धारण वर्ष / Assessment Year: 2017-18

Sushil Balasaheb Gondhale, 49/3, Triveni Nagar Housing Society, Opp. Vaibhav Theatre, Hadapsar, Pune- 411028. PAN : ASPPG5370A	Vs.	ITO, Ward-14(2), Pune.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri Sourabh Nayak  
Date of hearing : 11.06.2024  
Date of pronouncement : 21.06.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

This appeal filed by the assessee is directed against the order dated 29.12.2023 passed by LD CIT(A)/NFAC for the assessment year 2017-18.

2. The appellant has raised the following grounds of appeal :-

*"1. On the facts and the circumstances of the case and in law, lower authorities erred in passing ex-parte order and erred in deciding the issue only on the basis of material available with them, this action is being violative of principal of natural justice. Your appellant prays for granting opportunity of hearing before lower authorities.*

*Without prejudice to the above grounds of appeal, following grounds are also taken on merit:*

*2. On the facts and the circumstances of the case and in law, learned CIT Appeal NFAC erred in rejecting the appellants appeal by not condoning the delay of 40 days which cause due to certain medical emergency your appellant prays for condoning the delay and adjudication of appeal on merit.*

*3. On the facts and the circumstances of the case and in law, the learned Assessing Officer erred in estimating the profit at the rate of 4 percent on the total deposits made in bank account. Appellant prays for just and fair in the said addition.*

*4. On the facts and the circumstances of the case and in law, the learned Assessing Officer erred in addition of Rs. 32,52,000/- being cash deposited during demonetization period by invoking provisions of section 69A and accordingly Levying the tax under section 115BBE and surcharge.*

*5. Alternatively, it is submitted that the cash deposit is also on account of sale turnover therefore, at the most addition can made of fair value of Net profit on such turnover, your appellant prays accordingly.*

*Your appellant prays for deletion of entire addition. Your appellant craves for to add, alter amend, modify, delete any or all grounds of appeal before or during the course of hearing.”*

3. The facts, in brief, are that the assessee is an individual engaged in liquor business. Income tax return for the period under consideration was not filed by the assessee. As per information available on income tax portal, the assessee was found to have deposited huge cash in his bank account during demonetisation period. In view of this fact, the AO issued statutory notices u/s 142(1) of the IT Act, but the assessee did not comply with any of such notices. The AO completed the assessment *ex-parte* u/s 144

of the IT Act by an order dated 28-11-2019 determining the total income of the assessee at Rs.56,18,803/-, out of which Rs.32,52,000/- was unexplained money u/s 69A of the IT Act & Rs.23,66,803/- was business income.

4. Since the assessee remained absent in first appeal hearing, vide impugned order dated 29-12-2023 LD CIT(A)/NFAC dismissed the appeal filed by the assessee & consequently confirmed the additions made by the AO.

5. Being aggrieved with the above *ex-parte* decision of the ld. CIT(A)/NFAC, the appellant is in appeal before us.

6. Ld. AR submitted before us that ld. CIT(A)/NFAC was not justified in deciding the appeal *ex-parte* without providing adequate opportunity of hearing to the assessee. It was further submitted by ld. Counsel of the assessee that although it has been mentioned in the *ex-parte* appellate order that adequate opportunities were provided to the assessee, but no details of notices of hearing was mentioned in the *ex-parte* appellate order. It is, therefore, requested before the Bench to set aside the *ex-parte* order passed by ld. CIT(A)/NFAC and further requested to provide

reasonable opportunity of hearing to the assessee, so that assessee can submit requisite details in support of the grounds of appeal.

7. Ld. DR supported the order passed by ld. CIT(A)/NFAC and requested to confirm the same.

8. We have heard ld. Counsel from both the sides and perused the material available on record. We find that ld. CIT(A)/NFAC has mentioned in the order that the assessee was provided with adequate opportunities, but nowhere in the order the details of dates of hearing, which was provided to the assessee, were mentioned. Therefore, we find force in the argument of ld. Counsel of the assessee that proper opportunity of hearing was not granted to the assessee. Therefore, in the interest of justice, we deem it proper to provide one more opportunity of hearing to the assessee to substantiate his case/claim before ld. CIT(A)/NFAC. In the light of above observation, we set-a-aside the *ex-parte* order passed by ld. CIT(A)/NFAC to his file with a direction to decide the grounds of appeal afresh after providing reasonable opportunity of hearing to the assessee. Ld. CIT(A)/NFAC shall pass the order as per fact & law after providing reasonable opportunity of being heard to the assessee. The assessee is also hereby directed to

respond to the notice issued by Id. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which Id. CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. Thus, the grounds of appeal raised by the assessee in the present appeal are allowed.

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

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

Sd/-  
**(R. K. PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> June, 2024.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.