

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

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.124/LKW/2024
A.Ys. 2017-18

Naved Israr, Jajmau Ganga Pul, Ekhlakh Nagar, Jajmau Chauki, Shekh Pur Nari, Unnao (U.P.) PAN AFGPI 0291G	Vs	Income Tax Officer-1(1) (5), Kanpur .
(Appellant)		(Respondent)

Appellant by	None (Adj. Application filed)
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)
Date of hearing	09/05/2024
Date of pronouncement	28/05/2024

ORDER

This appeal has been preferred by the assessee against order dated 17.01.2024 passed by the Id. Commissioner of Income Tax (Appeal) [hereinafter called the 'CIT(A)'], Jaipur for Assessment Year (AY) 2017-18.

2. The brief facts of the case are that the assessee had e-filed return of income for the captioned year on 03.08.2017 declaring a total income of Rs.3,16,180/-. The assessee's case was selected for scrutiny through CASS. Since there was no compliance on the part of the assessee during the course of scrutiny assessment

proceedings, the assessment was completed u/s. 144 of the Income Tax Act, 1961 (hereinafter called the 'Act') at a total income of Rs.18,33,180/-.

3. Aggrieved, the assessee approached the ld. First Appellate Authority challenging the addition. The ld. CIT(A) dismissed the assessee's appeal for non prosecution observing that notices dated 13/08/2020, 21.09.2020, 13.01.2021, and 22.12.2023 were issued to the assessee but no compliance had been made and that further no written submissions had been filed in support of any of the grounds of appeal taken.

4. Now, the assessee has approached this Tribunal challenging the dismissal of his appeal by raising the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Id. CIT (A) ,NFAC Delhi has grossly erred in the violating the principal of faceless appeal as announced for justices of honest taxpayers and the functioning of faceless processing's in honesty and judicially manner and to avoid litigation as created unnecessary by the AO.

2. On the facts and circumstances of the case and in law, assessment made u/s 144 r.w.s. 143(3) dated 14.12.2019 by ITO, WARD 1(1)(5) KANPUR would be invalid; notice issued u/s 143(2) by ITO, WARD 1(2)(3) KANPUR on 24.08.2018 who was not having Jurisdiction to issue such statutory notice for making assessment; in absence of a valid statutory notice issued u/s 143(2) by the correct jurisdictional AO u/s 2(7A) &

sec120 the consequential assessment order passed would be invalid and is liable to be quashed.

3. On the facts and circumstances of the case and in law, the the Id. AO as well as the Id. CT(A) NFAC Delhi erred in assuming jurisdiction over the case without proper service of notice issued u/s 143(2) of the IT Act, 1961 of the Act. So the assessment order passed u /s 144 r.w.s. 143(3) is a nullity, bad in law and liable to be quashed.

4. That the Ld. CT(A) NAFC, Delhi has always provided very short time to submit the responses whereas out of total four hearings three hearings were fixed during the covid- 19 pandemic. Hence the Id. CIT (A) was in hurry during the appellant proceedings. Therefore, principle of natural justice violated.

5. On the facts and in the circumstances of the case and in law, the Id. AO as well as the Id. CIT (A) NFAC, Delhi has grossly erred in making & confirming the additions on account of cash deposited during the demonetization period of Rs. 15,17000/- as unexplained money u/s 69A r.w.s. 115BBE of the IT Act, 1961 despite of accepting the source of the deposits & nature of business simply on the basis of assumptions & presumptions

6. The Assessment order of the learned ITO is erroneous on the facts and in the law. On the facts and in the circumstances of the case he ought to have accepted the returned Income. Thus, the addition should be deleted.

7. On the facts and in the circumstances of the case and in law, the Id. AO as well as the Id. CIT (A), NFAC, Delhi has grossly erred in making & confirming for charging interest 234B due to default in advance tax payment and interest u/s 234D

8. That the appellant craves his right to add, annul, amend, alter, withdraw and/or substitute any/ or all of the grounds of appeal before the finalization of the appeal.”

5. None was present for the assessee when the appeal was called out for hearing. However, an application dated 08.05.2024 seeking adjournment was placed before me citing the reason that the notice of hearing was received by the assessee through e-mail on 03.05.2024 and thus, the assessee had only three working days for preparation of the case. The assessee has also requested that for gathering necessary evidences and supporting documents, the assessee required more time. However, looking into facts of the case, I reject the adjournment application and proceed to adjudicate the appeal.

6. Since the order passed by CIT(A) was an ex-parte order, the ld. Senior D.R. had no objection to the restoration of appeal to the NFAC.

7. I have heard the ld. Departmental Representative and have also 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. It is evident that the ld. CIT(A) had issued as many as four notices which remained un-complied with by the assessee. However, 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 NFAC 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 NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC 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 final result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 28/05/2024)

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Aks –

Dtd. 28/05/2024

Copy of order forwarded to:

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

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

Assistant Registrar