

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC' LUCKNOW**

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.2/Lkw/2024
Assessment Year 2017-18

Junaid Ali, Village Ghaila, IIM Road, Near Career Medical College, Lucknow-226020 PAN -AIWPA 3483D	Vs.	Income Tax Officer 6(2), Lucknow-New.
(Appellant)		(Respondent)

Appellant by	Shri Harendra Kumar Tripathi, C.A.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (DR)
Date of hearing	22/04/2024
Date of pronouncement	28/05/2024

ORDER

This appeal has been preferred by the assessee against the order dated 20.09.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for 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 an individual engaged in the business of dealing in two wheelers under the name

and style of M/s. Aman Sales. The return of income for the captioned year was e-filed on 08.06.2017, declaring total income of Rs.3,70,630/-. From the records, the Assessing Officer (AO) noticed that the assessee had deposited of Rs.1,03,28,300/- in his Bank account. Therefore, the case was reopened u/s. 147 of the Income Tax Act, 1961 (hereinafter called the 'Act') and notice 148 of the Act was issued to the assessee to submit his return of income. In absence of any response, notice u/s. 142(1) of the Act was issued to the assessee. As the assessee failed to comply with the notice, the Assessing Officer completed the assessment u/s. 144 of the Act after making various additions. The assessment was completed at an income of Rs.24,99,170/-

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed on account of non-compliance by the assessee.

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

“1. That the learned CIT(Appeals) NFAC has erred in law and in facts in confirming the assessment order passed by

the learned Assessing Officer assessing the total income at Rs. 24,99,170/- against returned income Rs. 3,70,630/-.

2. That the learned CIT (Appeals) NFAC has erred in deciding the appeal Ex-parte, without considering the facts and circumstances of the case and without affording the reasonable opportunity of being heard to the appellant assessee. Thus the order had been passed by the learned authority was without following the principles of natural justice.

3- That the learned CIT (Appeals) NFAC erred in confirming the action of learned Assessing officer based upon surmises and conjecture without there being any evidence contrary to the contention of the assessee which is duly supported by documents.

4- That the learned CIT (Appeals) NFAC erred in considering all credits (through cheque and NEFT/RTGS plus cash) in the Bank accounts as Sales Receipts and derived income by applying 8% on the same. Thus addition in the gross total assessed income Rs. 2,83,275/- as per computation in point no. 19 of the assessment order.

5- That the learned CIT (Appeals) NFAC erred in confirming the addition made by learned AO of Rs. 10,52,000/- u/s 69A of the Income Tax Act 1961, which was accounted for in the in our Books of accounts.

6- That the learned CIT (Appeals) NFAC erred in confirming the order of learned AO of making addition of Rs. 6,18,270/- addition taken from 26AS of the appellant assessee which was included in the above credit/addition under point no. 4 above, which is unjustified.

Thus, the same income has been taxed again and again under separate sections/head of income under the Income Tax Act 1961. Which is not justified action on the part of Learned Assessing Officer and later by the learned

CIT(Appeals) NFAC and also against the statute and principles of natural justice and fairness in the taxation.

7. That the learned CIT (Appeals) NFAC erred in confirming the order of learned AO for not allowing chapter VIA deduction Rs. 1,75,000/- without ascertaining the facts which is unjustified action against the appellant assessee.

8- That the learned CIT (Appeals) NFAC has erred in confirming the order of the Id. Assessing officer ignoring the position of Law that provisions of section 69A cannot be applied in respect of income from a source which has already been taxed which would amount to double taxation i.e addition made above mentioned in point no. 6.

9- That the appellant assessee humbly prays to your honour that addition made in gross total income Rs.1,95,35,45/- may be deleted and Chapter VIA deduction be allowed.

10. That the appellant craves to add, amend, modify and withdraw any ground of appeal.”

5. At the outset, the Id. AR submitted that the appeal filed by the assessee is barred by limitation by 10 days. He further submitted that the assessee has submitted an application for condonation of delay in filing the appeal stating therein that the appeal could not be filed within the time stipulated on the ground that the assessee was suffering from fever, lower backache, giddiness and anxiety. The Id. AR further submitted that in support, the assessee has filed medical certificate duly supported by affidavit. It was prayed that

the delay caused in filing the appeal was not deliberate and was beyond the control of the assessee and therefore, the same may be condoned and the appeal be heard on merits.

6. Per contra, the Id. Senior Departmental Representative had no objection to the delay being condoned.

7. I have heard both the parties and have also perused the material available on record. From a perusal of application for condonation of delay, I am of the considered view 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 10 days and admit the appeal for hearing.

8. The Id. AR prayed that the assessee's appeal may be restored to the file of the NFAC for the purpose of adjudication on merits.

9. The Id. Senior D.R. had no objection to the restoration of appeal to the NFAC.

10. I have heard both the parties and have also perused the material on 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 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.

11. In the 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

Dated: 28 /05 /2024
Aks

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T.,

