

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1201/Del/2024  
Assessment Year 2012-13

<b>Muvin Khan</b> S/o Bunda Khan, Near Jama Masjid, Jhajhar Uttar Pradesh	Vs.	<b>ITO,</b> Ward-3(2) Bulandshahr
TAN/PAN: GRQPK8421J		
(Appellant)		(Respondent)

Applicant by:	Shri Deepak Goel, Advocate		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	19	06	2024
Date of pronouncement:	19	06	2024

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)' in short] dated 21.09.2023 arising from the assessment order dated 31.03.2012 passed by the Assessing Officer (AO) under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2012-13.

2. As per the grounds of appeal, the assessee has challenged the additions of Rs.39,69,860/- in the hands of the assessee by taking resort to Section 69 of the Act.

3. When the matter was called for hearing, the Id. Counsel pointed out that the aforesaid amount of Rs.39,46,000/- represents cash received by way of share on sale of agriculture land. The Id.

Counsel submitted that the source of cash is corroborated by documentary evidences and therefore, there is no rationale in making such additions as unexplained investment in the hands of the assessee. Adverting further, the Id. Counsel submitted that the AO has resorted to best judgment assessment under Section 144 of the Act without giving reasonable opportunity to the assessee to counter the allegations made in the show cause notice dated 10.12.2019. It was pointed out that the compliance of the aforesaid notice was fixed on 16.12.2019 and the assessment order was thereafter passed on 18.12.2019 therefore, a solitary opportunity was given to the assessee to meet the requirement. The opportunity given of about 5 days is also not adequate. The assessee belongs to a humble background and is illiterate agriculturist and does not know much about the complexities of the law.

4. Aggrieved by the additions made, the assessee preferred appeal before the CIT(A). However, no notice was served physically upon the assessee. The notices were possibly served through ITBA portal but however again the assessee could not excess such notice, if any, owing to the humble background. The Id. Counsel accordingly urged for suitable relief in the matter.

5. The Id. DR for the Revenue, on the other hand, relied upon the first appellate order as well as the assessment order.

6. I have carefully considered the rival submissions and perused the case records.

7. On perusal of the case records, it is transpired that there is a delay of 118 days in filing the appeal before the Tribunal. The

assessee has filed an application for condonation of delay. It is mentioned in the application that the delay has occurred due to non-attendance of the matter by the previous consultant and the assessee was not having knowledge of the status of the present case. Having regard to the short delay and also keeping in mind of fact that no serious prejudice has been caused to the revenue by such delay. Coupled with the fact that assessee belongs to a humble background the delay occurred in filing the appeal deserves to be condoned. The delay is thus condoned.

8. I find merit in the plea of the assessee that the opportunity given to the assessee to explain the source of cash deposited in the bank account under challenge was not adequate. A solitary opportunity was given at the fag end of the completion of the assessment and thereafter the assessment was passed without any further opportunity. The assessee claims that the source of cash is explainable from the evidences available in his possession and the cash deposited is out of proceeds of sale of land shared with him by their family members.

9. On perusal of the first appellate order as well, I see that neither any reference to notice issued and served upon the assessee is given nor any submissions of the assessee is taken note of. The CIT(A) has jumped to the conclusion by way of an unreasoned order. Such order passed under Section 250 of the Act cannot be countenance in law.

10. I thus consider it expedient to set aside the first appellate order and restore the matter back to the file of the AO to determine the issue afresh in accordance with law. Needless to say, reasonable opportunity shall be given to the assessee to

adduce evidences in support of source of cash deposited in question. It shall be open to the assessee to furnish such explanation and adduce such evidence as may be advised in the matter.

11. In the matter the appeal of the assessee is allowed for statistical purposes.

**Order was dictated and pronounced in the open Court on 19<sup>th</sup> June, 2024.**

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: June, 2024  
*Prabhat*