

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.170/Ind/2024
(Assessment Year: 2017-18)

Pradeep Plaha LG-39 Dawa Bazar, RNT Marg Dawa Bazar Indore (Appellant / Assessee)	Vs.	ITO 1(1) Indore (Respondent/ Revenue)
PAN: ADEPP2768F		
Assessee by	Shri Arpit Gaur, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.06.2024	
Date of Pronouncement	28.06.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 29.12.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2017-18. The assessee has raised following grounds of appeal:

"1. That, the learned CIT(A) as well as the ld. AO grossly erred, both on facts and in law, in passing the ex-parte orders without giving proper and effective opportunity of being heard to the appellant.

2. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for determining the income of the appellant at Rs.37,03,940/- for the relevant assessment year by framing an Assessment Order under s. 144 of the Income-Tax Act, 1961, without affording proper opportunity of being heard to the appellant, which is quite illegal, bad-in-law and void-ab- initio.

3. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the ld. AO for making an addition of Rs.32,24,250/ u/s. 69A of the Act on account of unexplained cash deposits in bank account without properly considering and appreciating the facts and circumstances of the case.."

2. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee while passing the impugned ex-parte order. He has referred to the para 4 of the CIT(A) and submitted that initial two notices issued by the CIT(A) were during the Covid pandemic period and thereafter the assessee has responded to the notice dated 12.12.2022 and requested for adjournment. However in the meant time the Counsel for the assessee met with an accident and could not attend hearing or filed requisite details and written submission before the CIT(A) and consequently the CIT(A) has dismissed the appeal while passing ex-parte order. He has also pointed out that the AO has also passed ex-parte order u/s 144 of the Act and whereby addition of Rs.37,03,940/- was made on account of deposit of cash in the bank account of the assessee during the year under consideration. Thus, ld. AR has submitted that the assessee be given one more opportunity to present its case and filed requisite details and evidences to explain source of the cash deposit in the bank

account. Hence, he has prayed that the matter may be remanded to the record of the AO for fresh adjudication.

3. On the other hand, Ld. DR has raised no serious objection if the matter is remanded to the record of the AO for fresh adjudication after considering relevant details and evidences to explain the source of deposit made in the bank account of the assessee.

4. We have considered the rival submission as well as gone through the orders of the authorities below. The AO has issued show cause notice u/s 142(1) to the assessee to explain the source of total cash deposit made in the bank account during the year under consideration. However, there was no response on behalf of the assessee to the said show cause notice dated 24.06.2019 and therefore, the AO has issued another notice on 12.07.2019 but there was no compliance on behalf of the assessee. Accordingly the AO proposed to make best judgment assessment u/s 144 of the Act and ultimately assessed the total income of the assessee at Rs.37,03,940/- by making an addition of Rs.32,24,250/- on account of unexplained cash credit u/s 69A of the Act. The assessee challenged the action of the AO before the CIT(A) however, due to noncompliance and response to the notice issued by the CIT(A) the appeal of the assessee was dismissed for non-prosecution. The assessee has now explained the reasons for non-compliance and appearance in the proceedings before the CIT(A) as the counsel of the assessee met with an accident and therefore, he could not attend proceedings. Accordingly in the facts and circumstance of the case

when the assessment order was passed u/s 144 and CIT(A) has also dismissed the appeal of the assessee while passing ex-parte impugned order the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the AO for fresh adjudication after verification, examination and considering the relevant details and evidences in support of source of cash deposit in the bank account of the assessee. Needless to say the assessee be given an appropriate opportunity of hearing before passing fresh order.

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

Order pronounced in the open court on 28.06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 28 .06.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*