

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

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.228/Ind/2024
(Assessment Year: 2017-18)

Manda Dubey, Ganeshganj, Ward No.10, Hoshangabad (M.P)	Vs.	ITO, Itarsi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: APKPD6457R		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	31.07.2024	
Date of Pronouncement	31.07.2024	

ORDER

The present appeal at the instance of the assessee is directed against order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Delhi dated 31.01.2024 which is arising from the assessment order passed u/s 147 r.w. s 144 of the Act dated 03.09.2021 framed by NFAC, Delhi.

2. The assessee has raised following grounds of appeal :

"1. That the impugned re-assessment notice dated 23/03/2020 for A.Y 2017-18 is invalid and without jurisdiction as same been issued without prior mandatory approval of specified authority in terms of section 151 of the Act (un-amended Section 151) and therefore the consequential

proceeding in form of re-assessment order is invalid, without jurisdiction and void ab initio.

2. That on the facts and circumstances of the case, the notice issued under section 148 by the AO is illegal, bad in law, without jurisdiction and barred by time limitation, hence, the reassessment order dated 03/09/2021 passed by the National Faceless Assessment Centre is also illegal, bad in law and without jurisdiction.

3. That the impugned re-assessment is passed without issuing the mandatory notice u/s 143 (2) of the Act, thus default of non-issue of notice u/s 143(2) of the Act is fatal to the order of re-assessment and will rendered the whole reassessment proceeding void-ab-initio being without jurisdiction.

4. That learned NFAC was not justified in upholding the order of the Ld. AO in view of the fact that the order passed u/s 144 r/w section 147 was illegal, void, in breach of principle of natural justice.

5. That the NFAC erred in framing an ex- parte order in violation of principle of natural justice and without any determination on the merits of the case and hence the said order is illegal, void and without jurisdiction.

6. That on the facts and in the circumstances of the case and in law, the learned NFAC erred in confirming the addition made by the Assessing Officer ("AO") under section 69A of the Act in respect of the cash deposited in bank on various dates aggregating to Rs. 12,60,000/- during demonetization.

7. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal"

3. Though the assessee has raised as many as 7 grounds of appeal referred above but the Ld. Counsel for the assessee did not made any submission on the legal issues raised in Ground No. 1 to 4 and it seems that assessee is not serious to press these grounds. Accordingly Ground No.1 to Ground No.4 are dismissed as NOT PRESSED.

3.1 As regards Ground No.5 & 6 are concerned Ld. Counsel for the assessee at the outset submitted that no fair opportunity of hearing was granted by the lower authorities and that the assessee has complete details to explain the source of alleged cash deposit of Rs.12,60,000/- during the demonetization period and if one more opportunity is granted then the assessee can file necessary details to the satisfaction of the Ld. A.O. He also submitted that the assessee is a Senior Citizen and she runs a kirana store and has cash in hand of approximate Rs. 7 lakhs as on 01.04.2016 duly reflected in ITR and coupled with the income earned during the year, sufficient cash was available in her hand to deposit the alleged sum of Rs.12,60,000/-.

4. On the other hand Ld. Departmental Representative apart from relying on the orders of lower authorities submitted that the assessee did not appear on any date of hearing granted by both the lower authorities. However if the assessee has necessary explanation to prove the source of alleged deposit then the matter may be restored to the file of the A.O.

5. I have heard rival contentions and perused the record placed before us. The assessee is an individual and as claimed by the Ld. Counsel for the assessee she is a senior citizen aged about 70 years and runs a kirana store. Return of income for the year under consideration has been furnished on 11.12.2017 declaring a total income of Rs.5,80,040/-. Demonetization scheme was announced

during the financial year 2016-17 and after the announcement of the scheme cash of Rs.12,60,000/- deposited in the bank account held in the name of the assessee with Central MP Gramin Bank. Based on the information about the alleged cash deposit case of the assessee was reopened by the department followed by issuance of notice u/s 148 of the Act and other valid notices prescribed under the Act for carrying out reassessment proceedings. Ld. A.O asked the assessee to explain the source of cash deposit of Rs.12,60,000/- and if unable to provide then why not the provisions of section 69 of the Act are invoked and the assessee is held to be liable to pay tax at higher rate as provided u/s 115BBE of the Act. However all the efforts of Ld. A.O went in vein and ultimately best judgment assessment completed u/s 144 of the Act and addition for unexplained investment u/s 69 of the Act made at Rs.12,60,000/-. Thereafter the assessee challenged the order of the A.O before Ld. CIT(A) but except filing the appeal no other evidences were placed. As a result Ld. CIT(A) placing reliance on the judgment of Hon'ble Punjab and Haryana High Court in the case of Nirmal Singh and others (Cr No.3791 of 2013 (O&M) dated 01.05.2014) confirmed the addition made by the A.O for placing any reasonable cogent and valid arguments/contentions by the appellant. Before this Tribunal Ld. Counsel for the assessee has submitted that the assessee is regularly filing the income tax return and taking into account the accumulated cash in hand for the past so many years coupled with the opening cash in hand as on 01.04.2016 as well as the income

earned prior to announcement of demonetization scheme, the assessee had sufficient cash in hand to explain the source of alleged cash deposit. Considering the said contention and also considering the facts and circumstances of the case and being fair to both the parties and also taking into consideration the old age of the assessee and that regular return of income is being filed by her, justice will prevail if the assessee is granted one more opportunity. I therefore restore the issue raised on merits about explaining the source of alleged cash deposit of Rs.12,60,000/- to the file of A.O for deciding it afresh for which reasonable opportunity of being heard to be provided to the assessee and also Ld. A.O is directed to entertain the additional evidence to be filed by the assessee for explaining the source of alleged cash deposits. The assessee is also directed to be vigilant and not to seek any adjournment without reasonable cause and should furnish the requisite details to the A.O at the earliest so that Ld.A.O can decide in accordance with the law. Accordingly the finding of Ld. CIT(A) is set aside and Ground of appeal at 5 & 6 are allowed for statistical purpose. Ground No.7 is general in nature which needs no adjudication.

6. In the result appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 31.07.2024.

Sd/-

(MANISH BORAD)
Accountant Member

Indore, 31.07.2024

Dev/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