

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.364/Ind/2023**  
**(Assessment Year: 2012-13)**

Dinesh Patel 1 Bilawali Chandwa Naka Indore (Appellant / Assessee)	Vs.	ITO 4(4) Indore (Respondent/ Revenue)
<b>PAN: BMLPP1180L</b>		
Assessee by	Shri Manjeet Sachdeva, AR	
Revenue by	Shri K.Bala Murali Krishna Sr. DR	
Date of Hearing	21.08.2024	
Date of Pronouncement	23.08.2024	

**ORDER**

**Per Vijay Pal Rao, JM :**

This appeal by assessee is directed against the order dated 31.07.2023 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2012-13. The assessee has raised following grounds of appeal:

*“01. That the learned National Faceless Appeal Centre (NFAC) Delhi failed to appreciate the application Under rule 46A of the Income tax Act, 1961 made by The appellant.*

*02. That the learned National Faceless Appeal Centre (NFAC) Delhi failed to appreciate the submission That the previous consultant of the appellant and not Comply to notice given by the appellant.*

*03. That the learned National Faceless Appeal Centre (NFAC) Delhi failed to appreciate the submission Made by the appellant.*

*04. That the learned AO as well as learned National Faceless Appeal Centre (NFAC) erred in not appreciating that Assessment has been done under section 143(3)/147 of the Income tax Act, 1961 for the assessment year 2011-12 And cash deposit at Rs. 1797000/- was allowed.*

*05. That the learned National Faceless Appeal Centre (NFAC) Delhi erred in confirming addition made by the Assessing Officer at Rs. 1650000/- on account of Cash deposit in bank.*

*06. That the addition made is not based on the facts and needs to be deleted.*

*07. That the appellant craves leave to add alter and Or delete any of the grounds of appeal.”*

2. The assessee is an individual and stated to be an agriculturist carrying out agricultural operations on about 20 acres of agricultural land. On the basis of the information received regarding the deposit of cash of Rs.16,50,000/- in the bank account the AO initiated the proceedings u/s 147 of the Act by issuing notice u/s 148 on 29.03.2019. There was no response on behalf of the assessee to the notices issued u/s 148 as well as u/s 142(1) of the Act. Consequently the AO framed the assessment on the basis of best judgment assessment u/s 144 r.w. section 147 of the Act whereby the income of the assessee was assessed at Rs.16,50,000/-. The assessee challenged the action of the AO before the CIT(A) and also filed additional evidences which was declined by

the CIT(A) and consequently the addition made by the AO was upheld.

3. Before the Tribunal Ld. AR of the assessee has submitted that since the assessment was completed u/s 144 of the Act therefore, the assessee filed requisite details and supporting evidences in support of the agricultural income before the CIT(A) along with an application under Rule 46A of the IT Rules 1962. Ld. AR has submitted that since the agriculture income is fully exempted therefore, the assessee was not required to file any return of income. He has further contended that the agricultural income of the assessee has been accepted by the department in the preceding year and pointed out that for the A.Y.2011-12 the AO while passing order u/s 143(3) r.w.section 147 has accepted the amount of Rs.17,97,000/- deposited in the Saving Bank Account out of agricultural income. Thus, Ld. AR has submitted that in view of the admitted fact of agricultural income in the hands of the assessee the additional evidence filed by the assessee in support of the claim ought to have been admitted by the CIT(A). He has referred to the additional evidences comprising of Bank account statement, land record maintained by the revenue department showing the agricultural operations carried out by the assessee on the land about 20 acres as well as lease agreement under which the assessee has taken the land on lease from the owners of the land. Thus, Ld. AR has submitted that the CIT(A) was not justified in rejecting additional evidences filed by the assessee. In support of his contention he has relied upon following decisions:

(i) Shri Madhusudan Dhakad Harda v. ITO Harda 44 ITJ 301(ITAT,Indore)

(ii) Rahul Maheshwari vs. Income Tax Officer 50 ITJ 568 (ITAT, Indore)

(iii) Shri OM Prakash Sharm vs. ITO 51 ITJ 101 (ITAT, Indore)

3.1 He has also relied upon the decision of Hon'ble Supreme Court in case of *Collector, Land & Acquisition v/s Mst . Katiji & Others (1987) 167 ITR 471 (SC)*

4. On the other hand, Ld. DR has submitted that the assessee has failed to explain sufficient cause for not producing supporting evidences and details before the AO despite sufficient particulars were given by the AO. He has relied upon the impugned order of the CIT(A).

5. We have considered the rival submissions as well as relevant material on record. The AO has passed best judgment assessment order u/s 144 r.w. section 147 when the assessee did not respond to the notices issued by the AO u/s 148 and 142(1) of the Act. The AO has made an addition of Rs.16,50,000/- on account of unexplained cash deposit in the bank account of the assessee. Before the CIT(A) the assessee filed an application under Rule 46A of the Income Tax Rules 1962 for admission of the additional evidences comprising of bank account statement of the assessee along with land record maintained by the revenue department showing agricultural activities carried out on the land which are

taken by the assessee on lease from the land owners. The assessee also filed the lease agreement for taking total land measuring 9.593 hectare/37.92 Beegha of agricultural land vide lease agreement dated 1<sup>st</sup> April 2011 along with documentary evidences of ownership of the land of lessors. It is pertinent to note that the additional evidences filed by the assessee is comprising of bank account statement and revenue record of agricultural land are maintained by the Government Department and banks and therefore, the assessee has no role in maintaining the said additional evidences. Thus the question of tempering or creating after thought evidences does not arise so far as the land record maintained by the revenue department of State Government and Bank account statement of the assessee is concerned. Further when the assessment order was passed ex-parte then the claim of the assessee was required to be verified from the supporting evidence to be filed by the assessee. Hence, in the facts and circumstances of the case, we are of the considered opinion that the CIT(A) ought to have admitted the additional evidences and the issue should have been decided on the basis of verification and examination of the additional evidences filed by the assessee by calling a remand report from the AO instead of confirming the addition made by the AO for want of supporting evidence. Hence, we admit the additional evidences filed by the assessee and consequently the impugned order of the CIT(A) is set aside. Since the additional evidences filed by the assessee is required to be verified and examined at the level of the AO, therefore, the matter is

remanded to the record of the AO for proper verification and examination of the additional evidences filed by the assessee and then adjudication of the matter after giving an appropriate opportunity of hearing to the assessee.

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

Order pronounced in the open court on 23 .08.2024.

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

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 23.08.2024**

**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*