

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

ITA No.1790/Del/2024

[Assessment Year : 2017-18]

Mehboob Ali Tanwar, A-60, Opp. Nangloi Police Station, Kavita Colony, Nangloi, New Delhi-110041. PAN-ADZPT4337M	vs	ITO, Ward-45(6), Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Nitin Gulati, Adv., Shri Sawan Datta, Adv. & Shri Rattanakar Datta, Adv.	
Respondent by	Ms. Nidhi Singh, Sr.DR	
Date of Hearing	14.08.2024	
Date of Pronouncement	27.08.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 19.02.2024 for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

1. *“That the impugned order is bad in law and on the facts and Circumstances of the case. Learned Commissioner Appeals also upheld the same.*
2. *That the learned Assessing officer Circle 35(3), New Delhi has unjustified raised the demand in the Assessment Order Passed by him on the additional Income amounting to Rs. 4,35,10,375/- Under section 144 of the Income Tax Act, 1961. Learned Commissioner Appeals also upheld the same.*

3. *That no reasonable opportunity was provided to the assessee to present his case and without giving any final notice, assessment has been made by the assessing officer.. Learned Commissioner Appeals also upheld the same.*
4. *That the order has been passed by the Assessing Officer making the additions under reference without giving proper show cause notice and providing due opportunity to the appellant and therefore same is bad in law being passed without following principles of natural justice. Learned Commissioner Appeals also sustained the Same.*
5. *That Assessing officer knowingly or unknowingly erred in passing the order by taking fictitious figures as he has taken cash deposit before demonetization as Rs.4,90,000/-and during demonetization as Rs. 13,89,000/- after demonetisation as nil which is not correct as actual cash deposited before demonetization was Rs.4,72,000/- during demonetization Rs. 10,16,000/- and after demonetization Rs.25,000/- .It is further submitted that as Assessing officer has taken total credit entries in the said account as Rs.4,20,04,375/- which is many folds high from actual credit entries .It is submitted total credit entries in the said account in actual are 59,90,000(including cash and other deposits) out of which cheques of Rs.31,32,000/-have either been returned or cancelled. So effectively Rs.28,58,000/- have been deposited Learned Commissioner Appeals also upheld the same.*
6. *That the Assessing Officer erred in applying provisions of Section 115BBE of the Act in the facts and circumstances of the case of Appellant and determining the tax-liability as per the aforesaid Section without appreciating that provisions of Section 68/69A were not applicable in the facts of the case and, therefore, provisions of Section 115BBE of the Act could not be invoked. Learned Commissioner Appeals also upheld the same.*

7. *That the Assessing Officer erred in making addition on account of cash deposited in the bank which was represented by cash balance as per books and without appreciating that amount under reference has already been considered as income by the Appellant in the year under reference or in earlier years and, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position. Learned Commissioner Appeals also upheld the same.*
 8. *That the Assessing Officer also erred in charging interest u/s 234B and 234C of the Act while determining demand payable by the Appellant without appreciating that since the Appellant could not be held liable for the payment of advance tax for the amount under reference, no interest u/s 234B and 234C could be charged particularly for the reason that special rate of tax has been provided under the Act and in any case charging the interest without recording proper satisfaction in this regard is illegal and unjustified and also result in demand even more than the amount of addition. Learned Commissioner Appeals also upheld the same.*
 9. *That total deposits have been added while making assessment it is submitted that no business operates at 100% margin and only profit element embedded should be taxed which has not been done in our case.*
 10. *That no notice whatsoever was received from Commissioner appeals for the hearing and Order has been passed by Learned Commissioner appeals without considering the Merits properly.*
 11. *That the appellant reserves the right to add alter and amend or to delete any or all the grounds of appeal on or before the date of hearing.”*
3. Facts giving rise to the present appeal are that the case of the assessee was taken up for scrutiny on the basis that the assessee did not file any return

of income. However, it was found that the assessee had deposited a sum of INR 4,20,04,375/- in his bank account. Before Assessing Officer ("AO"), there was no representation on behalf of the assessee, therefore, treated the credits in the bank account as unexplained and thus, assessed the income of the assessee at INR 4,35,10,375/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

5.1. Apropos to the grounds of appeal, Ld. Counsel for the assessee submitted that the authorities below did not provide adequate opportunity of being heard. He submitted that the AO has taken fictitious figures. He pointed out that the actual cash deposits before the demonetization period was INR 4,72,000/- and during demonetization INR 10,16,000/-. He contended that the AO has taken total credit entries in the said account at INR 4,20,04,375/- which is many folds higher than actual credit entries. He contended that the credit entries in the account was actually INR 59,90,000/- therefore, the assessment is erroneous and contrary to the records.

6. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

7. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities

below. The impugned order of the lower authorities is *ex-parte* to the assessee. It is the contention of the assessee that he did not receive notices of hearing. The assessee has filed copy of bank statement of Nainital Bank for Assessment Year 2017-18. We find force into the contention of Ld. Counsel for the assessee that the figures as mentioned in the assessment do not match with the bank statement so filed. The AO ought to have verified correct figure of credits of cash deposits during the relevant period. After considering the totality of the facts, we deem it appropriate to set aside the impugned order and restore the assessment to the file of Assessing Authority to make assessment afresh in the interest of principle of natural justice. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 27th August, 2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI