

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1051/Del/2024  
[Assessment Year : 2012-13]**

Suresh Singh, C/o-Sanjiv Sapra & Associates LLP, Chartered Accountants, C-763, New Friends Colony, New Delhi-110025. <b>PAN-ATZPS1024N</b>	vs	ITO, Ward -1(2)(5), Meerut.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Sanjiv Sapra, CA	
<b>Respondent by</b>	Shri Sanjay Kumar, Sr.DR	
<b>Date of Hearing</b>	19.08.2024	
<b>Date of Pronouncement</b>	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 22.02.2023 for the assessment year 2012-13.

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

1. *"That the Ld. CIT(A)- NFAC has erred on facts and in law in passing an ex-parte order dated 22/02/2023 for AY 2012-13 as none of the notices of hearing referred to in such appellate order were served on the Appellant resulting in violation of principles of natural justice.*
2. *That the ex-parte appellate order dated 22/02/2023 as passed is bad in law as various grounds of appeal raised in Form 35 have not been adjudicated upon on merits of Appellant's case.*
3. *That without prejudice to the above grounds, the ex- parte assessment order passed u/s 147/144 of the Income Tax Act, 1961 ("Act") dated*

*22/11/2019 is also bad in law as the entire proceedings as initiated, conducted and completed u/s 147/148 were illegal.*

4. *That the Ld. CIT(A)-NFAC has erred on facts and in law in confirming/upholding the addition of Rs. 16,00,000 on account of alleged cash deposits made in bank account of the Appellant. At any rate, the addition as made is very excessive.*
5. *That the levy of interest u/s 234A of Rs.3,04,344 and interest u/s 234B of Rs.3,18,023 is arbitrary, unjust & illegal and any rate, without prejudice, very excessive.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal.”*

3. The appeal is barred by 319 days. The assessee has filed application seeking condonation of delay.

4. Ld. Counsel for the assessee submitted that the assessee is a senior citizen and did not receive notice of hearing. Ld. Counsel for the assessee reiterated the submissions as made in the affidavit filed by the assessee. For the sake of clarity, the relevant contents of the affidavit are reproduced as under:-

*“I Suresh Singh, S/o Late Shri Raghuvir Singh, aged about 73 years presently R/o 1/31, Raksha Puram, Mawana Road, Meerut (formerly R/o 4/67, Raksha Puram, Mawana Road, Meerut) do hereby solemnly affirm and state on oath as under:*

1. *That I am a Senior Citizen and had retired as an employee of Canara Bank, Meerut on 31/01/2011.*
2. *That during the year AY 2012-13, I had received pension of Rs. 2,07,044 from M/s Canara Bank, Meerut and no income tax return for such AY was filed as no tax was payable during such year. My PAN is ATZPS1024N.*

3. *That in response to query letter dated 26/02/2019 issued by ITO, Ward 2(5), Meerut for FY 2011-12 (copy enclosed as Annexure-A to this Affidavit), I had duly filed reply dated 06/03/2019 as acknowledged by the Office of ITO, Ward 2(5), Meerut. Copy of such reply dated 06/03/2019 alongwith copy of my bank statement for the period 01/04/2010 to 31/03/2012 of my bank account number 8580111001139 with Canara Bank is enclosed as Annexure-B to this Affidavit, where the source of cash deposit of Rs. 16,00,000 in my bank account was explained.*
4. *That alleged statutory notice dated 29/03/2019 u/s 148 of the Income Tax Act, 1961 ("Act") for AY 2012-13 was never served on me.*
5. *That none of the subsequent notices as mentioned in the assessment order u/s 147/144 of the Act dated 22/11/2019 passed by ITO, Ward 2(5), Meerut were received by me and consequently, no compliance could be made during the course of assessment proceedings.*
6. *That the ex-parte assessment order u/s 147/144 dated 22/11/2019 has been passed by ITO, Ward 2(5), Meerut in complete violation of principles of natural justice and without even considering my above mentioned reply dated 06/03/2019.*
7. *That none of the notices of hearing as mentioned in the ex-parte appellate order u/s 250 dated 22/02/2023 as passed by NFAC, Delhi were received by me and hence, no compliance could be made before NFAC.*
8. *That I am not at all technology savvy and nor do I have any email ID. Accordingly, while filing the appeal in Form No. 35, I had specifically opted not to receive notices/communications by e-mail and none of the notices of NFAC were served on me in physical mode.*
9. *That in July 2021, I was diagnosed with heart ailment and have accordingly been primarily confined to my residence since then.*
10. *That I did not even receive the ex-parte appellate order u/s 250 dated 22/02/2023 as passed by NFAC, Delhi.*
11. *That I recently received a telephone call from the Office of my jurisdictional AO about some penalty notice and when my local CA Mr. S.*

*Varshney went to the office of the AO, he was informed about penalty notice issued u/s 271(1)(c) as uploaded on the web-portal of Income Tax Dept for which they were asking for a reply to be submitted. When my local CA logged into my income tax account on the web portal, he discovered that besides penalty notice u/s 271(1)(c) dated 22/02/2024, there was an uploaded ex-parte appellate order u/s 250 dated 22/02/2023 as-passed by NFAC, Delhi as per which the appeal as filed had been dismissed without going into the merits of the case.*

*12. Thereafter, I immediately contacted Mr. Sanjiv Sapra, FCA at Delhi for preparing and filing the second appeal before the Hon'ble ITAT against the ex-parte appellate order u/s 250 dated 22/02/2023.*

*13. That the second appeal against ex-parte appellate order passed u/s 250 dated 22/02/2023 could not be filed within the due date as I was recently made aware of passing of such ex-parte order as explained above.*

*14. That the delay of 293 days caused in filing the Tribunal appeal due to above facts and circumstances may kindly be condoned.”*

5. Ld. Counsel for the assessee prayed for condonation of delay and submitted that there was a reasonable cause for such delay and an affidavit dated 07.03.2024 was submitted by the assessee. Therefore, the delay in filing the appeal be condoned and appeal may be admitted for adjudication.

6. Ld. Sr. DR for the Revenue opposed these submissions and submitted that the assessee ought to have been vigilant and it is not that the appeal filed before Ld.CIT(A) is merely a formality but the assessee has to prosecute the same.

7. I have heard the rival contentions and perused the material available on record. The Revenue has not rebutted the averments made in the affidavit by the assessee. Therefore, for the reasons stated in the application and supporting

affidavit, I am of the considered view that there was reasonable cause that prevented the assessee from filing the appeal in time. The delay is hereby, condoned and the appeal of the assessee is admitted for adjudication.

8. Facts in brief of the case are that in this case, a notice u/s 148 of the Income Tax Act, 1961 ("the Act") was issued by the Assessing Officer ("AO") after obtaining the approval from the Competent Authority. Thereafter, the notice u/s 142(1) of the Act was issued but there was no compliance on behalf of the assessee. The AO issued a penalty notice u/s 271(1)(b) of the Act on 10.10.2019 but there was no compliance on behalf of the assessee. Therefore, he initiated penalty proceedings separately. Since there was no compliance on behalf of the assessee, the AO proceeded to make the best judgement assessment u/s 144 of the Act thereby, he added INR 16,00,000/- as income of the assessee i.e. entire cash deposited in saving bank account of the assessee.

9. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A). Before Ld.CIT(A) as well, there was no representation on behalf of the assessee. Therefore, he without adverting to the merit of the addition, dismissed the appeal of the assessee, *ex-parte*.

10. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

11. Apropos to the grounds of appeal, Ld. Counsel for the assessee contended that both the authorities have passed *ex-parte* order against the assessee. No meaningful opportunity had been was granted to the assessee. He submitted that before AO, in response to query, a letter dated 26.02.2019 filed by the assessee had

duly replied on 08.03.2019 giving the explanation before the AO about the withdrawal from the bank accounts and thereafter, deposited the same. The lower authorities ought to have verified the correctness of the same.

12. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and submitted that the assessee was negligent throughout the proceedings. He did not comply with statutory notices issued by lower authorities.

13. I have heard Ld. Authorized Representatives of the parties and perused the material available on records and gone through the orders of the authorities below. It is seen from the records that the assessee had filed a letter dated 06.03.2019 addressed to the Income Tax Officer, Ward 2(5), Meerut. The relevant contents of the letter are reproduced as under for the sake of clarity:-

*“Kindly refer to the notice F. No. AIR-2012-13/ITOW-2(6)/MRT/2015-10/ dated 26.02.2019 issued to the above named assessee. In this respect, the required information is given as under*

- 1. That the assessee is assessed to Income Tax at P.A.No. ATZPS1024N in Ward 2(5) The copy of P.A.No. is enclosed herewith.*
- 2. That the assessee has not filed the Income Tax Return for any financial year.*
- 3. That the assessee has not filed Return of Income for the assessment year 2012-13 relevant to financial year 2011-12.*
- 4. That the assessee is a retired Government employee of M/s Canara Bank, Meerut and source of his income is Pension of Rs. 2,07,044.20 during the year under consideration.*

5. That the copy of bank statement for the period 01.04.2010 to 31.03.2012 is enclosed herewith.
6. That so far as the question source of cash deposit of Rs. 16,00,000/- in bank account arises, the same can be explained in following ways the assessee retired from his regular service from 01.02.2011, After Retirement, the assessee received Rs. 4,50,402.32 from EPF on 31.01.2011, Rs. 5,65,410/- from Retirement fund on 01.03.2011, Rs. 7,01,691.81 from Gratuity fund on 03.03.2011. The Clarification letter from Bank is enclosed herewith.

The assessee has made withdrawals of Rs. 15,07,000/- (Detail of which is given after the para) during the financial year 2010-11 & 2011-12 from the Bank Account to give it to a relative to purchase an immovable property But they do not accept cash so the assessee again credited the amount in his bank account and then gave the amount to them after preparing Demand Draft of Rs. 5,00,000/- & 5,85,200/- on 16-01-2012 in the financial year 2011-12 relevant to assessment year 2012-13. The details of Cash Withdrawals is as follows:-

<b><u>DATE</u></b>	<b><u>AMOUNT</u></b>
06-01-2011	2,52,000/-
17-01-2011	50,000/-
18-01-2011	40,000/-
01-02-2011	50,000/-
18-02-2011	2,00,000/-
11-04-2011	1,60,000/-
18-04-2011	1,00,000/-
13-05-2011	1,00,000/-
19-05-2011	1,05,000/-
27-06-2011	1,00,000/-
29-06-2011	1,60,000/-
09-07-2011	1,00,000/-
22-12-2011	<u>90,000/-</u>
Total	<u>15,07,000/-</u>

7. The copy of Power of Attorney is enclosed herewith.

Kindly submit and satisfy the query.”

14. From the above, it is clear that the assessee had explained as to why he had not filed return of income and did explain to AO about the source of cash deposited in his bank account. It is also submitted that a letter dated 06.03.2019 filed by the assessee was not considered by the lower authorities. Therefore, it is not the case where the assessee had not filed any explanation about the source of cash deposited in his bank account. I therefore, set aside the impugned order and restore the issue to the file of AO to verify the correctness of contents of the assessee's letter dated 06.03.2019 and frame assessment afresh after giving adequate opportunity to the assessee to represent his case. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

Order pronounced in the open Court on 27<sup>th</sup> August, 2024.

**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