



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER  
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.183/LKW/2023  
Assessment Year: 2010-11

<b>Mohd. Arshad,</b> Ghosiyana, Rudauli, Faizabad- 224120.	v.	<b>ITO-1</b> Income Tax Office, Q4FP + G4W, Hotel Krishna Palace, Station Road, Civil Line, Faizabad-243001.
<b>PAN:BUDPA0830Q</b>		
(Appellant)		(Respondent)

Appellant by:	Shri. Shailendra Mishra, Adv		
Respondent by:	Shri. Sanjeev Krishna Sharma, Addl. CIT(DR)		
Date of hearing:	22	08	2024
Date of pronouncement:	29	08	2024

**ORDER**

**PER ANADEE NATH MISSHRA, A.M.:**

This appeal has been filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 21.04.2023 for the assessment year 2010-11. The grounds of appeal of the assessee are as under: -

*"1. That the learned Commissioner of Income-tax (Appeals ) has erred in law and on facts in arbitrarily upholding initiation of proceedings under section 147 of the 1.7.Act,1961 by the Assessing Officer who did not have the requisite reason to believe that any income chargeable to tax has escaped assessment and the impugned assessment order is void ab initio in view of various decisions of Hon'ble Supreme Court High Court/ jurisdictional ITAT, which are directly applicable on facts of appellant case.*

*2. That the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to consider that the impugned assessment order u/s 144/147 of the LT. Act 1961, is illegal because the Assessing Officer has not recorded reason to believe and proceeded on the basis of information received in respect of cash deposits in saving bank account of the assessee-appellant.*

*3. That the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to observe that the cash deposit of small amounts, in saving bank account, have been made on 65 different dates and peak credit was Rs.2,50,000 and the closing balance was 1,369 only; thus the assessment On total income of Rs.63,45,000 is illegal as such.*

*4. That the learned Commissioner of Income-tax (Appeals) has erred in law and on facts in failing to observe that the Assessing Officer has not awarded a reasonable opportunity of being heard to the assessee in respect of cash deposits in bank account.”*

2. Vide assessment order dated 31/12/2015 passed by the Assessing Officer (“AO”), the assessee’s total income was determined at Rs.63,45,000/-. In the aforesaid assessment order dated 31/12/2015, an addition of Rs.63,45,000/- (cash deposits in assessee’s bank account) was subjected to tax. The aforesaid assessment order was passed exparte qua the assessee u/s 144/147 of the Income Tax Act, 1961 (hereinafter “the Act”). Aggrieved, the assessee filed in the office of the Ld. CIT(A) vide impugned appellate order dated 21/04/2023, the Ld. CIT(A) dismissed the assessee’s appeal. The assessee being aggrieved again, this present appeal has been filed by the assessee in the Income Tax Appellate Tribunal.

3. At the time of hearing, learned counsel for the assessee submitted that the AO as well as the Ld. CIT(A) passed orders without providing reasonable opportunity to the assessee. He further submitted that the matter in dispute regarding the aforesaid amount of Rs.63,45,000/- may be restored back to the file of the AO with a direction to pass a fresh assessment order in accordance with law, after reasonable opportunity to the assessee. The Ld. Sr. Departmental Representative for Revenue expressed no objection to this.

4. We have heard both sides and perused the materials on records. We find, from perusal of the assessment order, that vide notices dated 14/10/2015 and 05/11/2015, the assessee was

issued two notices by the AO. The compliance date for the aforesaid notice dated 05/11/2015 was fixed on 07/11/2015, leaving just one day in between the date of issue of notice and date of compliance. Yet the assessment order was eventually passed after several weeks on 31/12/2015. If the assessment order was to be passed after lapse of such a substantial period of time, this period could have been used by the AO for providing further/reasonable opportunity to the assessee. In view of the foregoing, we are of the view that the AO closed the hearing in a hasty manner and passed the assessment order without providing reasonable opportunity to the assessee. Further, the Ld. CIT(A), in his impugned appellate order dated 21/04/2023 has not given consideration to the case laws relied upon by the assessee stating; *"It has not been explained how these judgments are applicable to the facts of the case"*. Moreover, on perusal of the records, we find that the assessee made written submission in response the notice issued by the Ld. CIT(A), but the Ld. CIT(A) did not raise any further query and also did not direct the assessee to explain how the case laws relied upon by the assessee were applicable to the facts of the case. Therefore, we are of the view that the Ld. CIT(A) also passed a hasty order without giving reasonable opportunity to the assessee. In view of the foregoing, and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present case before us; we set aside the impugned appellate order dated 21/04/2023 of the Ld. CIT(A) and we restore the issue in dispute regarding the addition of the aforesaid amount of Rs.63,45,000/- to the file of the AO with a direction to pass denovo assessment order after providing reasonable opportunity to the assessee. All grounds of appeal are treated as disposed off in accordance with the aforesaid direction.

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

Order pronounced in the open Court on 29/08/2024.

Sd/-  
[SUBHASH MALGURIA]  
JUDICIAL MEMBER

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 29/08/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar