

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH "SMC", ALLAHABAD**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.28/Alld/2024  
A.Y. 2017-18

<b>Shri Ganesh Bio Diesel Kisan Sewa Kendra</b> Pahara Mod, Raja Ka Rampur, Uttar Pradesh-207244. <b>PAN:- ADDFS9732M</b>	Vs .	<b>ITO, Ward 4(3)(3)</b> Aayakar Bhawan, Soron Gate, Kasganj, Uttar Pradesh-207123.
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri A.K. Singh. Senior D.R.
Date of hearing	07/08/2024
Date of pronouncement	30/08/2024

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed against order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter "the Ld. CIT(A)"/NFAC, Delhi dated 04/01/2024 dismissing the appeal of the assessee u/s 250 of the Income Tax Act, 1961 (hereinafter "the Act") which had been filed against the order of the ITO, Ward 4(3)(3), Kasganj dated 24/12/2019. The grounds of appeal are as under: -

*"1. Because the assessment order passed by the Ld. AO under section 143(3) of IT Act is bad in the eye of law and not in accordance of natural justice.*

*2. Because the addition of Rs. 25,04,000/- under section 69A of IT Act on account of alleged unexplained income is wrong and contrary to the facts.*

3. Because the LD. AO has failed to appreciate that the cash amount of Rs. 25,04,000/- deposited in the Canara Bank Account No. 1941214000012 out of business receipts duly appeared in the books of account and declared during the proceeding also.

4. Because the Ld. AO has failed to appreciate that the appellant has retail outlet or agency of automotive fuel which were allowed to accept old currency from customers during the demonetization period.

5. Because the demand and interest charged are wrongly calculated and very excessive.

6. Because the penalty of Rs. 10,000/- imposed by Ld. AO under section 272A(1)(d) is wrongly demanded without considering the facts and responses during the proceeding.

7. Because the Appeal Order under section 250 passed by Ld. CIT(A) is unclear and ambiguous.

8. Because the appellant prayed for dropping appeal (ITAT) proceeding if the appeal order passed by CIT(A) is in favour of the appellant without further proceeding due to the ambiguousness or unclarity of the Appeal Order under section 250.

9. Because the relief prayed for may kindly be allowed and the order of the AO and CITA) may kindly be quashed set aside annulled or modified.”

2. Before proceedings to discuss the facts of the case, it is pertinent to point out that during the course of the appeal, the assessee moved an application for admission of an additional ground which was as under: -

**“Because the appellant requested for reassessment of case before the JAO WARD 4(3)(1), (Face to Face), Etah (U.P.) by way of passing remand order by ITAT authority.**

Due to the technical and practical incapability of faceless scheme of hearing of Income Tax Department, I was unable to represent my case properly anywhere. So, it is requested to the respective authority to pass the remand

order for reassessment of my case before the JAO WARD 4(3)(1), (Face to Face), Etah. I want to represent my case physically to the office for better clarification of facts of my case. My case was never heard properly at any desk of the income tax department. So, I want the reassessment of my case in face-to-face mode and proper case proceeding at JAO WARD 4(3)(1), (Face to Face), Etah.

I prefer face to face hearing at JAO WARD 4(3)(1), (Face to Face), Etah because the jurisdiction AO of my PAN is JAO WARD 4(3)(1), (Face to Face), Etah. At the time of order passed by INCOME TAX OFFICER, WARD 4(3)(3), Kasganj, my case was transferred by the department to that office from Etah. Therefore, I was unable to proceed my case there and an adverse order passed by AO against me. But now I want a proper reassessment proceeding at JAO WARD 4(3)(1), (Face to Face), Etah.

I expect you will consider my facts as a judicial body and give me chance to represent my case during reassessment in face-to-face mode before JAO WARD 4(3)(1), (Face to Face), Etah by way of passing remand order.

All the facts that I declared are true and fair and only related to my firm.

Please consider my facts, I will be very thankful for your graciousness.

3. It was submitted that due to the technical and practical incapability of faceless scheme of hearing of the Income Tax Department, he was unable to represent his case properly anywhere. Therefore, he requested that the ITAT may remand the matter for re-assessment back to the JAO Ward 4(3)(1), Etah, so that he could represent his case physically for better clarification of the facts of the case.

4. We have duly considered this additional ground. Following the introduction of the faceless assessment scheme, except for certain categories of cases which have been notified by the CBDT for face to face hearings, all other cases are to be assessed in faceless mode. The ITAT has no power to order that a particular case which is not so notified, be heard in physical mode. Therefore, the additional ground filed by the assessee is dismissed

and he is advised to take appropriate steps to represent himself before the Income Tax Authorities in faceless mode.

5. Brief facts of the case are that the return of income was e-filed by the assessee on 07/11/2017, declaring a total income of Rs.3,240/-. The case was selected for scrutiny before the ITO Ward 4(3)(3), Etah and notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. Subsequently the case was transferred to ITO Ward 4(3)(3), Kasganj. As no compliance was made by the assessee, a penalty u/s 272A(1)(d) of the Act was levied upon the assessee and further notice u/s 142(1) of the Act were issued. In response to the same, the assessee furnished some details such a partnership deed, ITR and computation of income by uploading the same during e-proceedings but thereafter, despite several notices, did not furnish any further information as required under the notice u/s 142(1) of the Act. The Assessing Officer ("AO") records that the assessee was provided ample opportunities of being heard but he did not avail of them. He therefore, proceeded to complete the assessment to his best judgment u/s 144 of the Act. On going through the bank account statement, he observed that during the demonetization period cash to the tune of Rs.27,07,090/- was deposited by the assessee into its bank account maintained at Canara Bank, Bhurgain, Raja Ka Rampur, Etah. Out of this, Rs.25,04,000/- were deposited in demonetized currency (specified bank notes). Since the assessee did not furnish any reply to the various

notices, the AO treated this deposit to the extent of Rs.25,04,000/- as unexplained money and added the same back u/s 69A of the Act, bringing the same to the tax u/s 115BBE of the Act.

6. Aggrieved by this order passed by the ITO, Ward 4(3)(3), Kasganj, the assessee filed an appeal before the Ld. CIT(A), Aligarh, which was subsequently transferred to the NFAC. The appeal was delayed by 10 days. The assessee prayed before the Ld. CIT(A) that as his counsel was busy in the marriage of his son, the appeal could not be filed on time, hence, it may be condoned. The Ld. CIT(A) condoned the delay. It was then submitted that the AO was not justified in his actions because specified bank notes were admissible for transactions to Petrol pumps by the Government in the demonetization period and therefore, it was incorrect to hold the same as income from unexplained source and tax the same u/s 69A of the Act. However, the Ld. CIT(A) by relying upon the judgment of the Hon'ble Madhya Pradesh High Court in the case of PCIT Vs. M/s. Regent Beers & Wines Ltd (2023) 120 TLC 298 (MP) dismissed the appeal of the assessee without expressing any findings of his own. Aggrieved with the said summary dismissal of his case, the assessee is in appeal before us.

7. On the day of hearing, there was no representation from the assessee side, but as pointed out above, a request was made in writing for the addition of the additional ground for remand

proceedings to the jurisdictional AO, which we have already discussed in the earlier part of this order. However, on consideration of the facts of the case, it appears that the assessee has taken a plea before the Ld. CIT(A), that since it was running a petrol pump, and the Government had permitted petrol pumps to transact in specified bank notes even during the period of the demonetization, the amount deposited by it in the bank in specified bank notes could not be held to be unexplained money. It appears that the AO has not taken this fact into account, on account of the lack of compliance by the assessee during assessment proceedings. Therefore, in the interest of justice, we deem it fit to restore the matter back to the file of the AO with a direction to the assessee to make full compliance before the AO and to produce the books of accounts to demonstrate that the said cash deposit was made out of sale of fuel and lubricants and we accordingly direct the AO to examine the matter afresh in this light. Accordingly, the case is set aside for denovo assessment.

8. As we have set aside the matter for denovo assessment, the appeal of the assessee is deemed to be allowed for statistical purposes.

9. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 30/08/2024)

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Sd/-  
**(NIKHIL CHOUDHARY)**  
**ACCOUNTANT MEMBER**

Dtd. 30/08/2024  
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