



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.362/LKW/2024
Assessment Year: 2017-18

Shiv Swami Verma Village Muhari Purwa Faizabad Road Paisar Dehat, Barabanki	v.	The Income Tax Officer 5(5) Barabanki
TAN/PAN:AENPV8762R		
(Appellant)		(Respondent)

Appellant by:	Shri Prashant Kr. Verma, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	12	09	2024
Date of pronouncement:	30	09	2024

ORDER

This appeal has been preferred by the assessee against the order dated 12.10.2023, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2017-18.

2. The brief facts of the case are that the Department received information that the assessee had deposited a sum of Rs.157,000/- in his bank account maintained with Punjab National Bank, Branch Municipal Market, Barabanki during the demonetization period i.e. from 09.11.2016 to 30.12.2016. Notices were issued to the assessee under section 142(1) of the Act requiring the assessee to file his return of income. However, the assessee did not file his return of income. The Assessing

Officer invoked the provisions of section 115BBE of the Act and completed the assessment under section 144 of the Income Tax Act, 1961 (hereinafter called 'the Act'), assessing the total income of the assessee at Rs.8,59,050/- by making addition of Rs.8,59,050/- (being total deposit made in the bank account of the assessee for the financial year 2016-17) under section 69A of the Act.

3. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed.

4. Now, the assessee has approached this Tribunal challenging the action of the NFAC by raising the following grounds of appeal:

01. Because the Ld. CIT (A) has failed to know about the facts and circumstances of the case, and has arbitrarily give the decision thereof is bad in law and liable to set aside.

02. Because the Ld. CIT (A) has erred while not giving adequate opportunity of being heard like thereof is bad in law and against the Principle of Natural Justice "Audi Alteram Partem" of Constitution of India.

03. Because the Assesses financial condition is very poor that's why the assessee does not hire the proper council, since requested to you please set aside the case.

5. At the outset, the ld. AR submitted that the appeal filed by the assessee was barred by limitation by 168 days. He further submitted that the assessee has submitted an application for

condonation of delay in filing the appeal, supported by an affidavit, stating therein that the appeal could not be filed within the time stipulated due to bad health of the assessee, marriage of the Counsel's sister and his father's ill health. It was prayed that the delay caused in filing the appeal was not deliberate and was entirely beyond the control of the assessee and therefore, the same may be condoned and the appeal be heard on merits.

6. Per contra, the ld. Senior Departmental Representative had no objection to the delay being condoned.

7. I have heard both the parties and have also perused the material available on record. From a perusal of the application for condonation of delay, duly supported by Affidavit, I am of the considered view that the reason for not filing the appeal within the stipulated time is genuine. Therefore, I condone the delay of 428 days and admit the appeal for hearing.

8. The ld. AR prayed that the assessee's appeal may be restored to the file of the NFAC for the purpose of adjudication on merits.

9. Since the order passed by NFAC was an ex-parte order, the ld. Senior D.R. had no objection to the restoration of appeal to the NFAC.

10. I have heard both the parties and have also perused the material on record. It is evident that there was complete non-

compliance on the part of the assessee during the course of first appellate proceedings. However, looking into the facts of this case, I am of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the NFAC with the direction to provide one more opportunity to the assessee to present his case. I also caution the assessee to fully comply with the directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

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

Order pronounced in the open Court on 30/09/2024.

SD/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:30/09/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar