

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.155/Ind/2024
(Assessment Year: 2017-18)

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|---|---------------------------|---|
| Shri Atul Kantilal Jain, 6, Murrail Mohalla, Indore (Appellant / Assessee) | Vs. | ACIT-4(1), Indore (Respondent/ Revenue) |
| PAN: ABJPJ0276D | | |
| Assessee by | Ms.Shreya Jain, AR | |
| Revenue by | Shri Ashish Porwal, Sr.DR | |
| Date of Hearing | 08.10.2024 | |
| Date of Pronouncement | 09.10.2024 | |

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 11.01.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi for A.Y.2017-18.

2. Assessee has raised following grounds of appeal:

"1. That impugned order passed by the Ld. CIT(A) sustaining the order passed by the Ld. AO is bad in law, without jurisdiction, it is based on incorrect interpretation of law and without allowing proper and reasonable opportunity of being heard, moreover the facts have also been incorrectly construed.

2. That on the facts and in the circumstances of case and in law, the Ld. CIT(A) erred in stating the fact that he has issued questionnaire alongwith

notice dated 11.09.2023 but the appellant has not submitted the reply of the said questionnaire. In fact the assessee has not received any questionnaire attached with notice issued u/s 250 dated 11.9.2023 on its registered e-mail ID.

3.1 That on the facts and in the circumstances of case and in law, the Ld. CIT(A) erred in passing the appellate order without allowing opportunity for hearing through video-conferencing which is specifically requested by written submission dated 19.9.2023 and 10.11.2022.

3.2 That on the facts and in the circumstances of case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.8,65,000/- made u/s 68 being cash deposited during the course of demonetization in the bank account without appreciating the fact that during the assessment year in question and two preceding assessment years the turnover and cash received and deposited by the assessee is as under:

| Assessment year | Total turnover (Rs.) | Cash received from cash sales and debtors (Rs.) | Cash deposited in bank account out of cash sales and amount received from debtors (Rs.) |
|-----------------|----------------------|---|---|
| 2017-18 | 10,56,34,551/- | 1,75,51,260/- | 1,51,44,000/- |
| 2016-17 | 11,27,58,848/- | 2,48,66,361/- | 2,30,16,980/- |
| 2015-16 | 12,35,35,215/- | 2,33,01,897/- | 2,16,64,310/- |

3.3 That on the facts and in the circumstances of case and in law, the Ld. AO and CIT(A) failed to appreciate the fact that the assessee has filed the copies of account specifying full name, address, mobile number of the person from whom cash is received against the sales and copy of day to day and regular cash book from 1.11.2016 to 10.11.2016.

3.4 That on the facts and in the circumstances of case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.8,65,000/- without rejecting the books of account and invoking provisions u/s 145(3) of the IT ACT.

3.5 That on the facts and in the circumstances of case and in law, the Ld. CIT(A) erred in confirming the addition of Rs.8,65,000/- u/s 68 and charging tax on the special rate u/s 115BBE."

3. At the time of hearing the Ld. AR of the assessee submitted that the assessee is engaged in the business of trading of oil paint and related allied articles. The assessee filed his return of income on 30.10.2017 declaring total income of Rs.45,22,200/-. During the scrutiny the A.O has made an addition of Rs.8,65,000/- on account of unexplained cash deposited in the bank during the demonetization period. The assessee challenged the order of the A.O before CIT(A). The Ld. AR has pointed out that CIT(A) has issued two notices which was duly replied by the assessee however, no questionnaire was attached to the notices issued by CIT(A) and therefore, the impugned order was passed by CIT(A) without allowing hearing through video conference which was specifically requested vide written submissions dated 10.11.2022 and 19.09.2023. Thus, the Ld. AR has submitted that when the assessee has shown the turnover and sale proceeds recorded in the books of accounts and declared the income from the business activities of trading in oil paint and related items then without rejecting the books of accounts u/s 145(3) of the Act the addition made by the A.O is not justified. The CIT(A) has also confirmed the

addition made by the A.O while passing impugned order which is in violation of principal of natural justice. The Ld. AR has thus, submitted that the impugned order of CIT(A) may be set aside and the matter may be remanded to the record of CIT(A) for fresh adjudication.

4. On the other hand Ld. Departmental Representative raised no serious objection if the matter is remanded to the record of CIT(A) for fresh adjudication.

5. We have considered the rival submissions and carefully perused the impugned order passed by the CIT(A). The CIT(A) has confirmed the addition made by the A.O on account of unexplained cash deposited in the bank account while recording the reasons that the assessee did not respond to the hearing notices issued with the sole intention of hiding the particulars. On the contrary the assessee has submitted that the CIT(A) has not asked the assessee to furnish any details or record but a simple notice of hearing was issued against which the assessee filed replies dated 10.11.2022 and 11.09.2023. A copy of request of the assessee for allowing the

hearing through video conference is also placed at page No.5 of paper book as under:

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BEFORE THE HON'BLE COMMISSIONER OF INCOME TAX - (APPEALS)
National Faceless Appeal Centre
In the case of ATUL KANTILAL JAIN
6 MURRAI MOHALLA, INDORE (M.P.)
PAN : ABIP10276D
Assessment Year: 2017-18
DIN & Notice No.ITBA/NFCA/F/APL 1/2023-24/1055953288(1)
Sub :- Submission under Notice u/s 250 dated 11.09.2023

MAY IT PLEASE BE YOUR HONOUR

With reference to the hearing of above referred appeal we have to submit that we have already e-filed our written submissions alongwith the required supportings on 10.11.2023(08.11.2023) on income tax portal vide E-Acknowledgement no. 798165181101122, however copies of the same is again enclosed herewith along with E-Acknowledgement .

It is humbly requested and prayed that before completing the assessment an opportunity for hearing by video-conferencing be allowed to me through my authorized representative CA Prakash Jain and CA Shreya Jain having e-mail ID prakashsjainco@yahoo.com and shreyabarjatya@gmail.com. Their Mobile Nos. are 94250-62152 and 98274-33113 respectively. A letter of authority is already executed in their favour alongwith our earlier reply dated 10.11.2022

Thanking you,

Submitted by,

Place : Indore

Date: 19.09.2023

Encls:

1) Our earlier submission filed on 10.11.2023(08.11.2023) alongwith e-acknowledgement for filing.

5.1 Thus, it is clear that the assessee has demanded the hearing through video conferencing however, CIT(A) has passed the impugned order without allowing the hearing to the assessee. Further the CIT(A) has not given any finding on merits of the issue but dismissed the appeal for want of prosecution. Accordingly, in the facts and circumstances of the case the impugned order of CIT(A) is set aside and the matter is remanded to the record of CIT(A) for fresh adjudication after giving appropriate opportunity of hearing to the assessee.

6. The appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 09.10.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 09.10.2024

Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore