

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 1448/Del/2024, A.Y.2021-22)

Kumar Kanti Das 2214, Sector D Pocket 2 Vasant Kunj, New Delhi PAN No: AACPD8420B	Vs.	Assistant Commissioner of Income Tax Circle-72(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Sachit Jolly, Adv & Ms. Soumya Singh, Adv
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	22/10/2024
Date of Pronouncement	05/11/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Ld. CIT(A)/National Faceless Appeal Centre ["NFAC" for short], dated 30/01/2024 for the Assessment Year 2017-18.

2. The grounds of Appeal are as under: -

"1. That, in view of the facts and circumstances of the case, National Faceless Appeal Centre ("NFAC") erred in upholding the assessment order dated 24.12.2019 passed by the Assessing Officer ("AO") under Section 143(3) of Income-tax Act, 1961 (the "Act") assessing the total income of the Appellant at Rs.6,07,77,990/- against the returned income of Rs. 4,23,71,880/-, which is illegal, bad in law, without jurisdiction.

2. That the order dated 30.01.2024 ("Impugned Order") passed by NFAC is illegal and bad in law since the same have been passed in gross violation of principles of natural justice without affording the Appellant an opportunity of personal hearing.

3. That, in view of the facts and circumstances of the case, NFAC erred, on the facts and in law, in confirming the addition amounting to Rs. 1,85,00,000/- made by the AO under Section 69A of the Act in respect of the cash deposited by the Appellant during demonetization period, only on the basis of surmises and conjectures and without there being any material in support of the addition made.

That, in view of the facts and circumstances of the case, NFAC erred, on the facts and in law, in upholding the addition without appreciating that provisions of Section 69A of the Act are not applicable in the present case the cash deposited in the bank account during the demonetization period was duly recorded by the Appellant in the books of account, which were duly submitted during the assessment proceedings, and the nature and source of the same was also duly explained.

5. Without prejudice, the NFAC erred, on facts and in law, in confirming the addition under Section 69A of the Act by wrongly alleging that the Appellant has failed to prove the reasons for keeping the cash in hand without appreciating the bonafide explanations given by the Appellant even though there is nothing in the Act preventing the Appellant to keep the cash at his disposal.

6. Without prejudice, the NFAC as well as the AO erred, on facts and in law, in not appreciating that Rs. 1,85,00,000/- of cash balance in hand which was deposited in the bank account was duly disclosed in the assessment proceedings for AY 2014-15 which has been accepted as such by the then Assessing Officer.

7. Without prejudice, the NFAC and the AO erred, on facts and in law, in not appreciating that the source of the entire cash lying with the Appellant was the salary and interest income from past years on which the Appellant had duly paid the tax.

8. *That, in view of the facts and circumstances of the case, the Impugned Order passed by NFAC is patently perverse since it records that opportunity of personal hearing was granted on 04.12.2023 vide letter dated 18.12.2023, which is impossible.*

9. *That, in view of the facts and circumstances of the case, NFAC has grossly erred on facts and in law in making unwarranted observations in the Impugned Order qua the application of provisions of Section 269SS of the Act without appreciating that the Assessee had not paid any sum in cash.*

Without prejudice, NFAC failed to appreciate that it was only vide Finance Act, 2015, w.e.f. 01.06.2015, that the restriction under Section 269SS for utilizing cash against payment for purchase of property was introduced, whereas Assessee's cash-in-hand balance as on 31.03.2015 was Rs.1.90 crores.

10. *That in view of the facts and circumstances of the case, AO has erred on facts and in law in levying and charging interest u/s 234B and 234C of the Act. The computation of the same is also incorrect and excessive.*

11. *That the AO erred on facts and in law in initiating penalty proceedings under Section 271AAC of the Act.*

12. *The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.”*

3. Brief facts of the case are that, an assessment order came to be passed u/s 143(3) of the Income Tax Act, 1961 ('Act' for short) by making addition of Rs. 1,85,00,000/- u/s 69A of the Act vide assessment order dated 24/12/2019. As against the assessment order dated 24/12/2019, the Assessee preferred an Appeal before the CIT(A) and the Ld. CIT(A) vide order dated 30/01/2024 dismissed the Appeal filed by the Assessee which is under challenge before us.

4. The Ld. Counsel for the Assessee submitted that the order impugned of the Ld. CIT(A) has been passed in violation of principles of natural justice without affording the appellant an opportunity of personal hearing, thus submitted that the order impugned deserves to be set aside.

5. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities and sought for dismissal of the Appeal.

6. We have heard both the parties and perused the material available on record. During the appellate proceedings the Assessee requested for video conference. The request of the Assessee was accepted and later granting opportunity of video conferencing dated 24/11/2023 was issued to the Assessee. Thereafter, the Assessee sought for personal hearing which has also been granted to the Assessee by fixing the date of hearing on 04/12/2023. However, the Assessee has not appeared before the CIT(A) and the order impugned came to be passed placing the Assessee ex-parte. Considering the fact that the Assessee has been placed ex-parte and passed the impugned order without hearing the Assessee, we remand the matter to the file of Ld. CIT(A) for deciding the Appeal afresh in accordance with law after providing opportunity of being heard to the Assessee.

7. In the result, the Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 05th November, 2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 05/11/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI