



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

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.448/LKW/2024
Assessment Year: 2017-18

Lalji Yadav. 3/152A, Vivek Khand, Gomti Nagar, Lucknow, Uttar Pradesh- 226010.	v.	ITO-1(2) Pratyaksh Kar Bhawan, 57, Ramtirth Marg, Lucknow-226001
PAN:AAKPY2220J		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Smt Namita S. Pandey, CIT(DR)		
Date of hearing:	11	11	2024
Date of pronouncement:	13	11	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 05.06.2024 for the assessment year 2017-18. The grounds of appeal of the assessee are as under: -

"1 BECAUSE the assessment proceedings were initiated and concluded - without following the due process of law, the same were void ab initio and consequently the Id "CIT(A)" ought to have held the assessment order passed u/s 144 of the Income-tax Act, 1961 as illegal, bad in law and wholly without jurisdiction.

2, BECAUSE the assessment order dated 10.12.2019 passed by the Income-tax Officer-1(2), Lucknow-New u/s 144 of the Income-tax Act, 1961 was without jurisdiction, barred by limitation; hence illegal, and consequently the Id. "CIT(A)" ought to have annulled the assessment order instead of dismissing the appeal of the assessee by passing the impugned order ex-parte.

3. BECAUSE the assessment proceedings were not initiated and the notices u/s 142(1) dated 30.11.2017 and dated 25.06.2019 were not issued and served in accordance with law, the Id. "CIT(A)": should have held the assessment Proceedings as void-ab-initio and accordingly he should have quashed the assessment order passed by

Id. ITO-1(2), Pucknow by holding it as illegal and Wholly without jurisdiction.

4. BECAUSE while passing the assessment order u/s 144 of the Act the Id, Assessing Officer had acted arbitrarily, dis-regarding the mandate of law with regard to regular assessment proceedings and without providing reasonable opportunity of being heard to the “appellant”, consequently the Id. “CIT(A)” Ought to have held the assessment order a illegal, bad in law and wholly without jurisdiction.

5. BECAUSE, without prejudice to the grounds he reinforce, various notices issued by the Assessing Officer during the course of assessment proceedings, even though, not properly served, could not be complied with due to prolonged critical illness of the “appellant” and, therefore, the matter deserves to be restored to the Assessing Officer for passing the assessment order afresh after providing reasonable opportunity of being heard to the “appellant”.

WITHOUT PREJUDICE TO THE GROUNDS HERE-IN-FORE

6. BECAUSE in any case the Id. “CIT(A)” was not justified in dismissing the appeal by passing the impugned order ex-parte on account of non-prosecution of appeal without affording sufficient and effective opportunity of being heard to the “appellant”.

7. BECAUSE non-compliance of various notices of hearing issued by Id. “CIT(A)” was caused due to prolonged critical illness of the “appellant” owing to which the “appellant” could not ensure compliance of notices and filing of written submission before the Id. “CIT(A)” and on a due consideration of this fact itself the matter deserves to be restored to Id. “CIT(A)” for deciding the appeal afresh after affording reasonable opportunity of being heard to the “appellant”.

8. BECAUSE even in the ex-parte order, irrespective of non-appearance/non Prosecution of appeal by the assessee, the Id. “CIT(A)” ought to have dealt with the issues raised by the assessee in the grounds of appeal on merit and should have passed the order after taking into consideration the material and information available on record as per provisions contained in section 250(6) of the Act.

9. BECAUSE the impugned order has been passed by the Id. “CIT(A)” in complete violation of the provisions contained in sub-section (6) of section 250 of the Act,

10. BECAUSE the authorities below have erred in law and on facts in making/sustaining the addition of Rs. 3,53,67,575/-, comprising of

Cash deposit during Pre-Demonetization period (From 1 st April, 2016 to 8 th November 2016)	Rs.11,48,000/-
Cash deposit during Demonetization period (From 9 th Nov, 2016 to 30 th Dec, 2016)	Rs.1,70,00,000
Credit entries by way of RTGS/NEFT/CHEQUE (From 01.04.2016 to 31.03.2017)	Rs.1,72,19,575/-

in the hands of the “appellant” u/s 69A of the Act and taxing the said amount as per section 115BBE of the Act.

11. BECAUSE on the facts and in the circumstances of the case the provisions of section 69A of the Act did not get attracted: and consequently the addition of Rs. 3,53,67,575/- made/sustained by the authorities below u/s 69A deserves to be deleted.

12. BECAUSE as per the material and information on record cash deposits aggregating Rs.1,81,48,000/- (Rs.11,48,000/-(+)) Rs.1,70,00,000/-) in the bank accounts of the assessee during pre-demonetization and demonetization periods were made by the "appellant" out of earlier cash withdrawals from his bank accounts and, as such, the authorities below have grossly erred in making /sustaining the addition of Rs. 1,81,48,000/- by treating the said amount as unexplained money u/s 69A of the Act and in taxing the same u/s 115BBE of the Act.

13. BECAUSE out of aggregate credits of Rs. 1,72,19,575/- in the "appellant's bank account through RTGS/ NEFT/CHEQUE, the sums aggregating Rs.1,71,26,019/- represented un-secured loans obtained from friends & relatives, transfer from assessee's own bank account, and some other small credits which are not in the nature of income and as such the same could not have been treated /held as unexplained money so as to make the addition u/s 69A of the Act and consequently the ld. "CIT(A)" should have deleted the addition of Rs 1,71,26,019/- out of addition of Rs. 1,72,19,575/- made by the Assessing Officer.

14. BECAUSE the order appealed against is contrary to facts, law and principles of natural justice.

15. BECAUSE each ground taken in appeal is mutually exclusive and without prejudice to each other.

16. The appellant craves leave to add, delete or modify any of the grounds before or at the time of hearing of appeal."

2. Vide assessment order dated 10.12.2019 u/s 144 of the Income Tax Act, 1961 (hereinafter "the Act"), the assessee's total income was assessed at Rs.3,53,67,575/- (rounded off to Rs.3,53,67,580/-). The aforesaid assessment order was passed *exparte qua* the assessee, against which the assessee filed appeal in the office of the Ld. CIT(A). Vide impugned appellate order dated 05.06.2024, the Ld. CIT(A) dismissed assessee's appeal. The impugned appellate order dated 05.06.2024 of the Ld. CIT(A) was also passed *exparte qua* the appellant assessee. The present appeal has been filed by the assessee in Income Tax Appellate Tribunal (ITAT) against the aforesaid impugned appellate order dated 05.06.2024 of the Ld. CIT(A).

3. At the time of hearing before us, the Assessee was represented by Shri P. K. Kapoor, C.A. and Revenue was represented by Smt Namita S. Pandey, Ld. DR. The Ld. AR for the Assessee submitted that the assessee was prevented by compelling medical condition and Covid-19 pandemic, from making compliance to notices issued by Assessing Officer during the assessment proceedings and the Ld. CIT(A) during the appellate proceedings in the office of the Ld. CIT(A). He placed reliance on the medical certificates issued by "*Batra Hospital & Medical Research Centre*", New Delhi and "*G.D. Memorial Nursing Home*", Jaunpur; and on the affidavit filed by the assessee.

4. In view of the foregoing, the Ld. AR for the Assessee submitted that there were compelling grounds because of which the assessee could not comply with notices issued by Assessing Officer during the assessment proceedings and by the Ld. CIT(A) during the appellate proceedings. He submitted that issue in dispute in the present appeal may be restored to the file of the Assessing Officer with a direction to pass a fresh assessment order in accordance with law after affording reasonable opportunity to the assessee. However, the Ld. CIT-(DR) for Revenue opposed this request made from the assessee's side. She submitted that the Assessing Officer as well as Ld. CIT(A) provided sufficient opportunities to the assessee.

5. We have heard both sides. We have perused the materials available on records. After perusing the medical certificate issued by "*Batra Hospital & Medical Research Centre*", New Delhi and "*G.D. Memorial Nursing Home*", Jaunpur; the affidavit filed by the assessee, we are satisfied that there were sufficient reasons on the part of the assessee for non-compliance with the notices issued by Assessing Officer during the assessment proceedings

and by the Ld. CIT(A) during the appellate proceedings. Therefore, we are of the opinion that the assessee deserves further opportunity before the Assessing Officer to explain his case; accordingly, we set aside the impugned appellate order dated 05.06.2024 of the Ld. CIT(A) and we restore the issue in disputes in the present appeal to the file of the Assessing Officer with a direction to pass a fresh after affording reasonable opportunity to the assessee.

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

Order was orally pronounced in the open court, after conclusion of hearing on 11/11/2024. This detailed order in writing is pronounced today in open court on 13/11/2024

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 13/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

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

By order

//True Copy//

Assistant Registrar