

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD, 'SMC' BENCH, ALLAHABAD  
(Heard by DB)**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.138, 139,147 & 148/Alld/2024  
A.Ys. 2013-14 & 2014-15

Mohammad Sahadat Ali, Sayyad Nagar, Khakhru, Khaga, Fatehpur	vs.	Income Tax Officer, National Faceless Assessment Centre
PAN:CUNPA0977K		
(Appellant)		(Respondent)

Assessee by:	Sh. Aditya Chhajed & Sh. Shivang, Advocates
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	21.10.2024
Date of pronouncement:	29.11.2024

**ORDER**

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

These four appeals have been filed by the assessee against the orders of the ld. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 for the A.Y. 2013-14 and 2014-15 vide separate orders dated 8.07.2024. The grounds of appeal in all these cases are identical and are reproduced as under:-

*"1. On the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC). Delhi u/s 250 of the Act is bad both in the eye of law and on facts.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) (NFAC) erred in dismissing the appeal filed by the appellant on the grounds of non-submission of documents by the appellant without considering the submitted document and the facts of the case. The appellant, therefore, prays that the impugned order be set aside.*

3. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) (NFAC) erred in passing the impugned order without considering that the appellant was not resident of India as per Section 2(30) and Section 6(1) of the Income Tax Act. Appellant attached the copy of passport and Visa for perusal of NFAC to support his ground. A copy of the same is attached for the perusal of your Honors office.*

4. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) (NFAC) erred in passing the impugned order without considering the fact that the appellant is neither the owner of the property, the value of which has been included in the impugned order, nor has paid for the purchase of such property. the copy of registered title deed in the name of the true owner of the property and an affidavit from the true owner is attached herewith for your Honors perusal. The impugned order is against the principles of natural justice and is therefore liable to be quashed.*

5. *That the Ld. CIT (A) NFAC has erred in law and on the facts of the case in invoking section 69 r.w. section 115BBE of the Act, whereas the appellant in his appeal had duly disclosed the source of his bank transactions being his income from job outside India.*

6. *That the order passed by the Ld. NFAC is arbitrary and suffers from harshness in imposing such a high-income tax on the bank transactions not taxable in India. The impugned order is devoid of the merits and is therefore liable to be quashed.*

7. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) NFAC erred in dismissing the appeal filed by the appellant without deciding the appeal on the merits as laid down in Dinesh Kumar Chimanbhai Nandani Versus Income Tax Officer and ITO, New Delhi v. M/s. M.M. Chhabra & Sons (HUF), New Delhi.*

8. *On the facts and circumstances of the case, the order passed by the Ld. CIT (A) (NFAC), Delhi u/s 250 of the Act, on 08.07.2024 is bad in the eye of law as the same is issued after the time limitation period allowed by the section 250 of the Act.*

9. *That the impugned order passed by the Ld. CIT (A) (NFAC), is on assumptive grounds and is beyond the financial capacity of the assessee to pay.”*

10. *That the assessee craves leave to amend, alter or add to the grounds of appeal before or during the hearing of the matter.”*

2. Subsequent to the filing of the appeals, an application was received on 21.10.2024 that ITA Nos.138 & 139/Alld/2024 were originally filed before the Hon'ble ITAT Delhi Bench. However, since the appropriate jurisdiction for appeal was before the Hon'ble ITAT, Allahabad', therefore, the Hon'ble ITAT Delhi had transferred the matter to Hon'ble ITAT, Allahabad Bench. As the appellant was unaware of the transfer of these cases to ITAT Allahabad Bench, fresh appeals had been filed by the assessee with respect to these two orders before the ITAT, Allahabad Bench bearing ITA Nos. 147/Alld/2024 for the A.Y. 2013-14 and ITA No.148/Alld/2024 for the A.Y. 2014-15. In view of the above, the assessee requested permission to withdraw the earlier appeals filed under ITA No.138/Alld/2024 and ITA No. 139/Alld/2024. Shri. A.K. Singh, Sr. DR, had no objection to the withdrawal of these appeals. Accordingly, these two appeals are dismissed as withdrawn.

3. The facts of the case in the remaining two appeals are similar. The Department received information that the assessee had constructed a market in the name of Apna Bazar in Takiya Fakeer Mohalla and made unexplained investment of Rs.12,11,300/- in the same in the A.Y. 2013-14 and unexplained investment of Rs.2,34,620/- in the A.Y. 2014-15. Furthermore, in the assessment year 2014-15, the assessee was found to have unexplained credits of Rs.14,88,315/- in his bank account. Since the search of the Departmental data base did not reveal that the assessee had filed any return prior to the investments, the ld. AO had reason to believe that there was income escaping assessment to the extent of investments made by the assessee. Accordingly, in both assessment years, the ld. AO issued notices under section 148. There was no compliance to the notices under section 148. Therefore, the ld. AO issued notices under section 142(1) on three occasions. Upon the failure to receive any compliance, a show cause notice under section 144 was issued to the assessee and upon failure to receive compliance to the same, orders were passed under section 147 r.w.s. 144 and section 144B of the Income

Tax Act on 20.03.2022 in the A.Y. 2013-14 and 21.03.2022 in the A.Y. 2014-15. The investments made by the assessee in the construction of the house property and the credits in his bank accounts were brought to tax in his hands in the said assessment orders. Aggrieved with the said assessment, the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A), NFAC, observed that the appeals were delayed but he condoned the delay after considering the submissions of the assessee that the email ID registered on the Income Tax Portal, did not belong to him and he came to know about the assessment orders only when he received a hard copy by the post. The ld. CIT(A) considered these submissions of the assessee that in the A.Ys.2013-14 and 2014-15, that the assessee was an NRI and his total income in India did not exceed the maximum limit which were not chargeable to tax. However, he observed that the assessee had not submitted any documentary evidence such as passport/Visa in support of his claim of being NRI in the relevant year, therefore he refused to accept the contention of the appellant. He further observed that the assessee had filed an affidavit to the extent that the owner of immovable property was one Liyaqat Ali, but the ld. CIT(A) observed, that he had not submitted any copy of registered deed/Parcha/Khatiyani etc., in support of his claim and hence the contention of the assessee could not be accepted. He further observed from the bank statement of the assessee, that he had deposited cash in his bank accounts on various dates during the year and from the same he concluded that the assessee was continuously residing in India during the year. In view of the above, he rejected all the grounds of appeal taken by the appellant and the additions made by the ld. AO were upheld.

4. The assessee is aggrieved at this dismissal of his appeal by the ld. CIT(A), NFAC and has accordingly come before us. Shri. Adiya Chhajed, Advocate (hereinafter referred to as the 'ld. AR') appeared on behalf of the assessee and argued the case. It was submitted that the assessee was working in Saudi Arabia from 1997 till 2018. During the years under consideration, the assessee did not

come to India, however since the family of the assessee reside in India, he used to remit a portion of his income back to India for utilization of the same by his parents. Since, the assessee was an NRI, until his permanent return to India in 2014, he was obligated to comply with the provisions of the Income Tax Act, only for limited purposes. It was submitted that the proceedings under section 148 that were initiated against the assessee could not be attended due to the fact of the assessee's absence from India and accordingly, an *ex parte* order was passed against the assessee. Subsequently, an appeal was filed against the said order. It was submitted that the notice of hearing that was issued on 7.06.2024, was replied to by the assessee on 15.06.2024 but the Id. CIT(A), NFAC had passed the impugned orders dated 8.07.2024, without considering the reply filed by the assessee and holding that the assessee had not produced the documents to support his arguments. It was submitted, that in fact the assessee had filed a detailed reply to the notices issued by the Id. CIT(A), and in proof of the same, our attention was invited to page 20 of the paper book for the A.Y. 2013-14 which contained Acknowledgment Bearing No.440321291150624 filed for the A.Y. 2013-14 and page no. 5 of the paper book filed for the A.Y. 2014-15 which contained Acknowledgement Bearing No. 440416351150624. Inviting our attention to the acknowledgments, the Id. AR submitted that it would be seen that not only had he filed affidavit, title deed, copy of passport and bank statement, but he had also filed a written submission with regard to the notices issued. However, the Id. CIT(A), NFAC had not bothered to go through the documents that had been uploaded along with the replies and had simply stated that evidences had not been filed by the assessee. It was submitted that since the order had been passed without taking material evidences available on record, the impugned orders were in violation of the principles of natural justice and therefore, void. In support of this argument, our attention was invited to the following decisions:-

- i. ACIT vs. Balmiki Prasad Singh, 2018 (9) TMI 1936 – SC.
- ii. Nabco Products Pvt. Ltd. vs. Union of India & Others Writ Tax No.997 of 2022 (Allahabad) dated 3.08.2022.
- iii. Emco Cables (India) Private Limited vs. Union of India & Others, W.T.(C) 1622/2024 and C.M. Appl. 6702/2024 dated 27.02.2024 (Delhi).

Accordingly, it was prayed that since the assessee was not heard on merits, it was a sufficient ground for quashing the orders passed by the Id. CIT(A), NFAC. It was, therefore, prayed that the impugned orders dated 8.07.2024 for the A.Ys. 2013-14 and 2014-15, may kindly be set aside and directions be issued to provide the assessee with a fresh opportunity to present the complete facts at hand and thereafter for the lower authorities to adjudicate the matter, based on the facts available on record. In response, Shri. A.K. Singh, Id. Sr. DR submitted that while he had no objection to the matter being remanded back to the Id. CIT(A) for consideration of the evidence furnished by the assessee, in view of the failure of the assessee to comply during assessment proceedings, the Tribunal may issue instructions to the assessee to make due compliance before the Id. CIT(A) so that Id. CIT(A) may have the benefit of his assistance during the appeal proceedings.

5. We have duly considered the facts and circumstances of the case. It is fairly clear that the assessee had uploaded the necessary evidences in support of his arguments, to the Id. CIT(A) in both the appeal proceedings on 15.06.2024. It is also fairly evident that the Id. CIT(A) has not considered these evidences, before finalizing his appeal order. This is clearly violative of principles of natural justice and therefore, we are of the view that the assessee deserves an opportunity to present his case, especially because consideration of his arguments and evidences go to the very root of the matter i.e. his status for the purposes of determination of taxability of investments purported to be made by him and amounts deposited by

him in his bank account. Accordingly, we remand back both the appeals in ITA Nos.147/Alld/2024 for the A.Y. 2013-14 and ITA No.148/Alld/2024 for the A.Y. 2014-15 to the file of the Id. CIT(A) for a fresh decision on the matter, after considering the evidences already submitted by the assessee and any other that the assessee may wish to submit upon being issued further notices. We also direct the assessee to make full compliance before the Id. CIT(A), NFAC so as to enable him to determine the true facts of the case. As the appeals have been set aside to the file of the Id. CIT(A), they are deemed to be allowed for statistical purposes.

6. In the result, appeals in ITA No. 138/Alld/2024 and ITA No.139/Alld/2024 are dismissed as withdrawn while appeals in ITA No.147/Alld/2024 and 148/Alld/2024 are held to be allowed for statistical purposes.

Orders pronounced on 29.11.2024 at Allahabad U.P.

*Sd/-*  
**[SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

*Sd/-*  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

DATED: 29/11/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order  
Sr. P.S.