



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

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.319/LKW/2024
Assessment Year: 2017-18

Mohammad Sajid Gram & Post Jahangirabad Varabanki (U.P)	v.	Income Tax Officer 5(4) Barabanki
TAN/PAN:FLYPS5250Q		
(Appellant)		(Respondent)

Appellant by:	Shri Shailendra Mishra, Advocate		
Respondent by:	Shri Sunil Kumar Rajwanshi, D.R.		
Date of hearing:	05	12	2024
Date of pronouncement:	11	12	2024

ORDER

This appeal has been preferred by the assessee against the order dated 21.03.2022, passed by the National Faceless Appeal Centre (NFAC) for Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is an individual and derives income from purchase and sale of Vegetables. The assessee did not file the return of income for the year under consideration, because as per him, his income was below the taxable limit. The Assessing Officer (AO) noticed that the assessee had deposited an amount of Rs.17,02,500/- during the demonetization period in his Bank Account No.35469432111 maintained with State Bank of India, Satti Bazar Branch, Barabanki. The AO issued statutory notices to the assessee.

However, the assessee did not respond to the notices issued by the AO. The AO, therefore, proceeded to complete the assessment on the basis of Best Judgment Assessment, after issuing show cause notice to the assessee. While completing the assessment under section 144 of the Income Tax Act, 1961 (hereinafter called "the Act"), the AO treated the cash deposits of Rs.19,99,980/- made by the assessee in his bank account during the demonetization period as his unexplained income and added the same to the total income of the assessee under section 69A of the Act.

3. The Assessing Officer also invoked the provisions of section 115BBE of the Act and also initiated penalty proceedings under sections 271AAC, 271F and 272A(1) of the Act.

4. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed ex-parte qua the assessee.

5. Now, the assessee has approached this Tribunal challenging the orders of the AO as well as the NFAC by raising the following grounds of appeal:

1. That the learned Commissioner of Income-tax (Appeals), NFAC has erred in law and on facts in failing to judiciously consider the submissions of the assessee-appellant and

arbitrarily dismissing the appeal against ex-parte order u/s 144 of the I.T. Act.

2. That the learned Commissioner of Income-tax (A), NFAC has erred in law and on facts in upholding the arbitrary addition of Rs.19,99,980 u/s 69A of the I.T. Act, which is proved as the sale proceeds of Agricultural produce and Agri based products related to wholesale business of the assessee, on the basis of presumptions, surmises and conjectures.

3. That the appellant craves permission for amending the aforesaid grounds of appeal and/or for raising fresh grounds of appeal.

6. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted before me that the assessee is an individual and derives income from purchase and sale of Vegetables and has not maintained any books of account. He submitted that the assessee had filed his returns of income for assessment years 2016-17, 2019-20 and 2023-24. However, no return of income had been filed for the year under consideration owing to the fact that the total income of the assessee was below the taxable limit. The Ld. A.R. further submitted that the AO had sent notices under section 142(1) and 144 of the Act on the email id 'issubbk@gmail.com', which related to the earlier Counsel of the assessee, and the same were not transmitted to the assessee by the Counsel, resulting into non-compliance on behalf of the

assessee before the AO. The Ld. A.R. also submitted that the AO was not justified in arbitrarily treating the Bank deposits of the assessee as unexplained money, without providing a reasonable opportunity to the assessee to explain the source thereof. The Ld. A.R., therefore, prayed that in the interest of justice, the matter may be restored to the file of the AO for deciding the same afresh after providing reasonable opportunity of being heard to the assessee. He submitted that the assessee undertakes to produce all the relevant documents in support of his claim before the AO.

7. The Id. Senior D.R. had no objection to the restoration of appeal to the file of the Assessing Officer.

8. I have heard both the parties and have also perused the material on record. 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 Assessing Officer with the direction to provide one more opportunity to the assessee to present his case and produce the necessary evidences in support of the impugned bank deposits. I also caution the assessee to fully comply with the directions of the Assessing Officer in the set-aside proceedings when called upon

to do so, failing which, the Assessing Officer shall be at complete liberty to pass the order in accordance with law, based on the material available on record even if it is ex-parte qua the assessee.

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

Order pronounced in the open Court on 11/12/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:11/12/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar



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

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.319/LKW/2024
Assessment Year: 2017-18

Mohammad Sajid Gram & Post Jahangirabad Varabanki (U.P)	v.	Income Tax Officer 5(4) Barabanki
TAN/PAN:FLYPS5250Q		
(Appellant)		(Respondent)

Appellant by:	Shri Shailendra Mishra, Advocate		
Respondent by:	Shri Sunil Kumar Rajwanshi, D.R.		
Date of hearing:	05	12	2024
Date of pronouncement:	11	12	2024

ORDER

This appeal has been preferred by the assessee against the order dated 21.03.2022, passed by the National Faceless Appeal Centre (NFAC) for Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is an individual and derives income from purchase and sale of Vegetables. The assessee did not file the return of income for the year under consideration, because as per him, his income was below the taxable limit. The Assessing Officer (AO) noticed that the assessee had deposited an amount of Rs.17,02,500/- during the demonetization period in his Bank Account No.35469432111 maintained with State Bank of India, Satti Bazar Branch, Barabanki. The AO issued statutory notices to the assessee.

However, the assessee did not respond to the notices issued by the AO. The AO, therefore, proceeded to complete the assessment on the basis of Best Judgment Assessment, after issuing show cause notice to the assessee. While completing the assessment under section 144 of the Income Tax Act, 1961 (hereinafter called "the Act"), the AO treated the cash deposits of Rs.19,99,980/- made by the assessee in his bank account during the demonetization period as his unexplained income and added the same to the total income of the assessee under section 69A of the Act.

3. The Assessing Officer also invoked the provisions of section 115BBE of the Act and also initiated penalty proceedings under sections 271AAC, 271F and 272A(1) of the Act.

4. Aggrieved, the assessee preferred an appeal before the NFAC. However, the appeal before the NFAC came to be dismissed ex-parte qua the assessee.

5. Now, the assessee has approached this Tribunal challenging the orders of the AO as well as the NFAC by raising the following grounds of appeal:

1. That the learned Commissioner of Income-tax (Appeals), NFAC has erred in law and on facts in failing to judiciously consider the submissions of the assessee-appellant and

arbitrarily dismissing the appeal against ex-parte order u/s 144 of the I.T. Act.

2. That the learned Commissioner of Income-tax (A), NFAC has erred in law and on facts in upholding the arbitrary addition of Rs.19,99,980 u/s 69A of the I.T. Act, which is proved as the sale proceeds of Agricultural produce and Agri based products related to wholesale business of the assessee, on the basis of presumptions, surmises and conjectures.

3. That the appellant craves permission for amending the aforesaid grounds of appeal and/or for raising fresh grounds of appeal.

6. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted before me that the assessee is an individual and derives income from purchase and sale of Vegetables and has not maintained any books of account. He submitted that the assessee had filed his returns of income for assessment years 2016-17, 2019-20 and 2023-24. However, no return of income had been filed for the year under consideration owing to the fact that the total income of the assessee was below the taxable limit. The Ld. A.R. further submitted that the AO had sent notices under section 142(1) and 144 of the Act on the email id 'issubbk@gmail.com', which related to the earlier Counsel of the assessee, and the same were not transmitted to the assessee by the Counsel, resulting into non-compliance on behalf of the

assessee before the AO. The Ld. A.R. also submitted that the AO was not justified in arbitrarily treating the Bank deposits of the assessee as unexplained money, without providing a reasonable opportunity to the assessee to explain the source thereof. The Ld. A.R., therefore, prayed that in the interest of justice, the matter may be restored to the file of the AO for deciding the same afresh after providing reasonable opportunity of being heard to the assessee. He submitted that the assessee undertakes to produce all the relevant documents in support of his claim before the AO.

7. The Id. Senior D.R. had no objection to the restoration of appeal to the file of the Assessing Officer.

8. I have heard both the parties and have also perused the material on record. 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 Assessing Officer with the direction to provide one more opportunity to the assessee to present his case and produce the necessary evidences in support of the impugned bank deposits. I also caution the assessee to fully comply with the directions of the Assessing Officer in the set-aside proceedings when called upon

to do so, failing which, the Assessing Officer shall be at complete liberty to pass the order in accordance with law, based on the material available on record even if it is ex-parte qua the assessee.

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

Order pronounced in the open Court on 11/12/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:11/12/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar