

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCH "B", JAIPUR
BEFORE SHRI GAGAN GOYAL, ACCOUNTANT MEMBER AND
SHRI NARINDER KUMAR, JUDICIAL MEMBER
ITA No. 171/JPR/2024 (A.Y. 2017-18)

ITO, Ward 5(1),
Jaipur – 302 005

..... Appellant

Vs.

Deepak Kumar Naryani,
14 Santosh Sagar Colony,
Madhovilas Ke picche Brahmpuri,
Ward No. 54, Jaipur – 302 001.
PAN No. AELPN 6566P

.....Respondent

Appellant by	:	None
Respondent by	:	Ms. Alka Gautam, CIT (Th. V.C), Ld. DR
Date of hearing	:	16/12/2024
Date of pronouncement	:	06/01/2025

ORDER

PER GAGAN GOYAL, A.M:

This appeal by revenue is directed against the order of NFAC, Delhi dated 28.12.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:-

- 1. On the facts and in the circumstances of the case, the Ld. CIT (A) has grossly erred in admitting the additional evidences in spite of the fact that the assessee failed to comply during the remand proceedings as well as assessment proceedings before the AO.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in facts and in law in deleting an addition of Rs. 4,85,18,61,105/- on account of unexplained money u/s. 69A without appreciating the fact of the case.*

3. *The appellant craves leave to add, alter, amend, without on insert any ground or grounds of appeal before or at the time of hearing of the appeal.*

2. The Brief facts of the case are that the assessee individual was amongst the non-filers of return u/s. 139 of the Act. The AO was in possession of information that the assessee had made financial transactions of Rs. 116, 75, 77,509/- during the year under consideration, but no return of income was filed. Hence, a notice u/s. 148 of the Act was issued. Still no return was filed by the assessee. Although, as a matter of procedure notices u/s. 142(1) of the Act were also issued vide dated: 25.06.2021, 29.11.2021 and 13.01.2022 along with questionnaire, but there was no response from the assessee. Considering the non-cooperative attitude of the assessee, ultimately the assessment was completed u/s. 144 of the Act r.w.s. 147 & 144B of the Act.

3. During the assessment proceedings, it was further observed considering the AIR received in the case of the assessee that the assessee had actually deposited Rs. 485, 18, 61, 105 in various bank accounts as mentioned in para 6 of the assessment order as under:

Bank Name	A/C Number	Amount of cash deposited (Rs.)
Axis Bank	916020010413744	Rs. 10,55,76,070/-
Axis Bank	916020004933298	Rs. 16,22,69,290/-
Axis Bank	916020059538233	Rs. 75,72,49,680/-
Axis Bank	916020004056430	Rs. 29,62,22,102/-
ICICI Bank	103105001689	Rs. 1,78,68,59,258/-
ICICI Bank	103105001507	Rs. 17,18,67,739/-

ICICI Bank	025305004585	Rs. 13,85,07,400/-
ICICI Bank	103105002010	1,02,32,05,094/-
ICICI Bank	103105001687	5,27,70,650/-
ICICI Bank	025305004586	Rs. 17,19,54,805/-
Yes Bank	006160800000502	Rs. 18,53,79,017/-
Total		Rs. 485,18,61,105/-

4. The revenue issued the notices u/s. 133(6) of the Act to the bankers also, but there was no response received. It was also observed that the assessee filed return for immediate preceding year and succeeding year also, i.e. A.Y.s 2016-17 and 2018-19 i.e, except for the year under consideration. Ultimately, the case of the assessee was assessed at Rs. 485, 20, 84,462/- (Including income as per Form No. 26AS amounting to Rs. 2, 23,357/-). The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), NFAC, who in turn allowed the appeal of the assessee. Now, the revenue being aggrieved with this order of the Ld. CIT (A) preferred the present appeal before us.

5. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the department alongwith grounds raised before us. It is observed that the assessee was non-cooperative during the assessment proceedings, before the Ld. CIT (A) and before us also none appeared for the assessee. Although, before the Ld. CIT (A) also, it is observed that very selective submissions/cooperation was there as a matter of comfort and strategy of the assessee suitable to him. The conduct of the assessee is not appreciable and order of the Ld. CIT (A) contains self contradictory findings. These remarks on the assessee and Ld. CIT (A), we will substantiate in coming paras of our order. It is observed that the Ld. CIT (A) also issued various notices to the assessee during appeal hearing before him vide para 4 of the Ld. CIT (A)'s order, i.e. 14.03.2023, 18.10.2023, 03.11.2023,

16.11.2023 and 29.11.2023 and finally **the assessee obliged** the first appellate authority on 30.11.2023 by filing his response/submission and the Ld. CIT (A) observed as under:

4.1 Along with the above submission, the assessee filed various documents. On perusal of those documents it is seen that they were the same as the ones filed along with the Appeal Memo/Form No. 35. In other words, no new material was filed during the course of appeal proceedings.

4.2 Meanwhile, the material filed along with Form No. 35 was forwarded to AO in terms of Rule 46A of I.T. Rules. It is again pointed out here that Assessment was completed under section 144 of the Act and the assessee had not filed any details during the course of assessment proceedings. Therefore, the material was forwarded to AO as required under Rule 46A of the Rules. The report of AO was received on 13.12.2023. The same reads as under:-

In this context, it is submitted that a remand report was called in the case of the assessee in appeal no. NFAC/2016-17/10138773 dated 09.05.2022 for A.Y. 2017-18

In compliance to the same, sufficient opportunities were provided to the assessee to submit his reply/submission in support of her claim/additional evidences filed before the Id. CIT(A) vide this office letter DIN No ITBA/COM/F/17/2023-24/1058015881(1) dated 17.11.2023. The same letter has been duly served to the assessee by Mail as well as by speed post. (Screen shot attached). However, the assessee has not filed any reply/submission and has not made any compliance in response to above letter.

As the assessee has been provided ample opportunities of being heard to furnish its submission/reply on the additional evidences/submission furnished before your honour However, the assessee failed to avail these opportunities, hence a report is being submitted as the assessee does not have any reply in this regard. Thus, the additional evidences furnished by the assessee before your honour under Rule-46A of the I.T Rules, 1962 may not be entertained.

Report is submitted for kind consideration"

4.3 The Report of AO dated 13 12.2023 was forwarded to the assessee on 14.12.2023 and the assessee was required to submit his comments on the contents of the Remand Report along with necessary material in support of such comments. However, no response has been received from the assessee till date. The stipulated date for filing his comments was on or before 21.12.2023.

4.4 Though the assessee did not comply with the notice issued by the AO in the remand proceedings, I admit the new evidence as there are valid reasons for that. I record my reasons as herein under.

There was error in the Assessment order in as much as there is no specific mention that the 11 bank accounts were in the name of the assessee. Notices u/s. 133(6) of the Act was issued to the banks to furnish the details of bank accounts along with copy of bank statement. However, the banks did not comply with the notice u/s. 133(6) and AO was compelled to complete the assessment without the material which he thought was required for completing the assessment. The material filed with Form No. 35 indicated that all the 11 bank accounts under question belonged to some other person. Therefore, the error in the Assessment order (which had happened due to non compliance by the banks to notice u/s. 133(6) cannot be allowed to be continued when there is material establishing that there was an error in the Assessment order.

6. In the light of the above findings of the Ld. CIT (A), it is well established that the findings of the Ld. CIT (A) are highly self contradictory. As per the assessee before the Ld. CIT (A), “he was appointed as a customer service point (CSP) of M/s. Quicksun Technologies Pvt. Ltd. (QTPL) for registration of the customer submission of the application forms for cash deposit/cash withdrawals, money transfer, banking related information to customers. The assessee is authorized by the company M/s. QTPL for doing Domestic Money Transfer (DMT) transactions as per R.B.I. approved model. However, assessee has deposited an amount of Rs. 1,00,51,300/- to company bank account for domestic remittances on which an amount of Rs 39,759.46/- has been collected by the assessee as charges from the customers. The ledger details have been attached before the Ld. CIT(A). Ownership of the cash belongs to the customer. Assessee has collected cash from the customers for transfer of domestic remittance services and collects some charges from the customers. The cash has been deposited into the bank accounts of M/s. Quicksun Technologies Private Limited from where it gets transferred to Retail Customer’s Bank accounts. The Migrant Labour population

needs to transfer money to their families in villages. Their earning is mainly in cash so they deposit cash into bank accounts of their family members through DMT. The service is provided as the normal bank branches do not allow non home branch to deposit cash. M/s. Quicksun Technologies Private Limited, which is registered as business correspondent of various bank like ICICI Bank, Paytm Payments Bank etc. is into the business of giving this service to the migrant labours”.

7. Considering the above facts emanated from the order of the Ld. CIT (A), following facts have emerged for our consideration:

A). Appeal was filed with delay and Ld. CIT (A) has not dealt with the issue of delay and condonation thereof in his order;

B). As per Para 4.2 of the Ld. CIT (A)'s order, documents submitted before the Ld. CIT (A) and the same were not filed before the AO were sent to the AO for his comments/remand report. Again the assessee never appeared before the AO to substantiate his submissions made first time before the Ld. CIT (A). Ultimately, again the AO issued an *ex-parte* report vide dated: 13.12.2023;

C). Even the Ld. CIT (A), confronted the assessee with the report of the AO mentioned (supra) and due date to comply with the same was 21.12.2023, but this time the assessee was not in **a mood to oblige** the Ld. CIT (A);

D). In para 4.4 of the order, Ld. CIT (A), was within the know of the fact that the assessee had not appeared before the AO and even before him, still he has valid reasons for admitting the additional evidences. As per him, in the assessment order, the AO had not mentioned specifically that 11 bank accounts mentioned (supra) in fact pertain to the assessee and as per the information submitted **1st time before him along with the Form No. 35, same pertain to some other person, i.e. M/s. QTPL. Hence this mistake can't be carried forward further;**

E). The above remarks of the Ld. CIT (A) are not appreciable, as he himself admitted that the assessee and concerned bankers never cooperated with the AO during the assessment proceedings and notices issued under section 133(6) of the Act respectively. In this case the Ld. CIT (A) demonstrated a great example of mercy, liberalization and approach towards the assessee by ignoring the established procedure of law. When it is unchallenged fact that the assessee never appeared before the AO during the assessment proceedings, never cooperated the Ld. CIT (A) himself and above the all no response during the remand proceedings before him and the AO, still he himself proceeded the search the reasons for regularizing the whole process in favour of the assessee, which any bench may seldom witness in any such matter. Rather, we witness the situation other way around, where the assessee claims that he cooperated in remand proceedings and before the Ld. CIT (A), but still his submissions and evidences were misplaced/ ignored;

F). There is no specific mention about the documents/ additional evidences filed by the assessee and relied upon by the Ld. CIT (A). Para 5.1 and 5.2 of the order are highly contradictory, as the same can be understood from the verbatim reproduction these of the same as under:

“5.1 It is claimed that the assessee is DMTS ('Domestic Money Transfer Service') agent/retailer/merchant/Customer Service point ('CSP') for a person/entity named QuickSun Technologies Pvt. Ltd. ('QSTPL'). It is also claimed that QSTPL is an authorised/approved Domestic Money Transfer agent/business correspondent for some banks. It is also claimed that the agents like assessee are authorised by its principal like QSTPL to collect cash from persons (mainly migrant labourers) who want to remit money to other persons located at some other place and such collection of many persons is deposited in the bank accounts of QSTPL. It is further claimed that QSTPL then transfers the money to the destination bank accounts. In nutshell, the claim is that the assessee working as CSP for QSTPL collected cash from various individuals and deposited that cash in the bank accounts belonging to (standing in the name of) QSTPL. As per the Assessment order the details of such bank accounts and deposit of cash in them are as under:

Bank Name	A/C Number	Amount of cash deposited (Rs.)
Axis Bank	916020010413744	Rs. 10,55,76,070/-

Axis Bank	916020004933298	Rs. 16,22,69,290/-
Axis Bank	916020059538233	Rs. 75,72,49,680/-
Axis Bank	916020004056430	Rs. 29,62,22,102/-
ICICI Bank	103105001689	Rs. 1,78,68,59,258/-
ICICI Bank	103105001507	Rs. 17,18,67,739/-
ICICI Bank	025305004585	Rs. 13,85,07,400/-
ICICI Bank	103105002010	1,02,32,05,094/-
ICICI Bank	103105001687	5,27,70,650/-
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Yes Bank	006160800000502	Rs. 18,53,79,017/-
Total		Rs. 485,18,61,105/-

5.2 ***Though it has not been established beyond doubt that the assessee was CSP of QSTPL and QSTPL was indeed an authorised/approved Domestic Money Transfer agent/business correspondent for some banks and all the cash deposit of Rs. 485, 18, 61,105 was towards the so called Domestic Money Transfer on behalf of migrant labourers, the fact on record is that all the 11 bank accounts were in the name of QSTPL. Though the assessee deposited cash in various bank accounts of QSTPL (the claim of the assessee is that he deposited only Rs. 1, 00, 51,300/- in the bank accounts of QSTPL), the beneficiary and/or owner of the money was QSTPL. If the money belonged to the assessee as his unexplained money and was handing it over to QSTPL for some purpose then such a purpose has not been brought on record by AO. Though AO treated the assessee as owner of the money within the meaning provided in section 69A he has not brought anything on record to explain why assessee was depositing his unexplained money in the bank accounts of other person. Moreover, as per a document filed by the assessee i.e. a letter from QSTPL, it has owned up the money by stating that the bank accounts belonged to QSTPL and they have no relation with the assessee as the transactions carried out by the assessee were for DMT transactions. In the remand proceedings also AO did not carry out any independent or third party verification to negate the claim of the assessee that he was not the owner of the cash deposited in the 11 bank accounts. In view of these facts on record, I find that the owner of the money was QSTPL and if the money was unaccounted for then necessary action as per the Act is required to be taken in the case of QSTPL.***

8. In view of the above discussion and facts on record, we don't have any hesitation in declaring the order of the Ld. CIT (A) as vague, flimsy and erroneous. The powers of the Ld. CIT (A) are coterminous with that of the AO. In other words, what an AO can do the CIT (A) can also do. Substantially, the role of the Ld. CIT (A) is that of the

Senior AO. Certainly the assessee as well as the Revenue expects a fair degree of adjudication from his office considering the facts of the case and law applicable. He is duty bound to correct the order of the AO, if it is wrongly decided against the assessee. But, on the other hand he is duty bound to improve the order of the AO, if the same is erroneous for department (As in this case). A detailed working on this case was expected from him, as the assessee never cooperated with the AO, but the same assessee shown confidence in him and supplied relevant information also, as he claimed in his order (Although without giving any specific details).

9. As there is no representation/submission from the assessee before us, we have considered the paper book filed by the Revenue before us. It is observed that bank accounts under consideration were simply used during the demonetization period and few of them closed also after conversion of Specified Bank Notes (SBNs). Credentials about registration with R.B.I. and identification of so called migrant depositors are also not verified. Relation-ship of the assessee vis-à-vis M/s. QTPL is also not examined for sake of genuineness of the transactions. It is observed that the operations of cash deposit were run throughout the country and how the assessee was involved into this was also not clear. The approach of the assessee is absolutely dubious and conducts of M/s. QTPL also beyond understanding, still the Ld. CIT (A) found it to be in order.

10. In view of the above, we set aside the order of the Ld. CIT (A) with a direction to examine the matter again by collating the relevant information from M/s. QTPL and the assessee. If the assessee and M/s. QTPL are not able to establish the authenticity of the transactions w.r.t. Identity, Creditworthiness and

Genuineness the same should be added back to the income of the assessee and M/s. QTPL on protective and substantive basis respectively.

11. In the result, the appeal of the revenue is allowed for statistical purposes with above directions.

Order pronounced in the open court on 6th day of January 2025.

Sd/-

(NARINDER KUMAR)

JUDICIAL MEMBER

Jaipur, दिनांक/Dated: 06/01/2025

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., Sr.DR., ITAT,
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Jaipur

	Details	Date	Initials	Designation
1	Draft dictated on PC on	06.01.2025		Sr.PS/PS
2	Draft Placed before author	06.01.2025		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			

