

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'DIVISION BENCH', AMRITSAR**

**BEFORE SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER  
AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No. 42/Asr/2024

निर्धारणवर्ष / Assessment Year : 2017-18

Daljeet Singh, Prop. Lucky Di Hatti, Lower Baran, Phalwal Distt. Jammu, Jammu & Kashmir 181122	बनाम	The ITO, Ward2(1), Panama Chowk, Jammu 180012
स्थायीलेखासं./PAN NO: EULPS2604M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

( HybridHearing )

निर्धारितीकीओरसे/Assessee by : Shri P.N. Arora, Advocate

राजस्वकीओरसे/ Revenue by :Mrs. Neelam Sharma, Sr.DR

सुनवाईकीतारीख/Date of Hearing : 23.12.2024

उदघोषणाकीतारीख/Date of Pronouncement : 15.01.2025

**आदेश/Order**

**Per Krinwant Sahay, AM:**

Appeal in this case has been filed by the Assessee against the order dated 14.12.2023 passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) for A.Y. 2017-18.

2. Grounds of appeal are as under:-

1. *That the order of the Assessing Officer as well as the order of Learned CIT(A) are both against the facts of the case and are untenable under the law.*
2. *That the worthy CIT(A) has not appreciated the facts of the case and merely relied on order of the AO and without applying his mind and without any rhyme & reason, the Ld. CIT(A) has confirmed the addition of Rs. 12,17,896/- made by the AO. As such the order of Ld CIT(A) is liable to be cancelled and the addition made may be deleted.*
3. *That the AO while completing the assessment, has not issued notice u/s 143(2) as admittedly the return in this case was duly filed on 25/09/2019 therein showing the income of Rs.2,98,860/-.*
4. *That the AO has grossly erred in dividing the addition into two parts and upto 08/11/2016 he has applied a rate of 8% on the total receipts and as such the addition was made to the tune of Rs. 1,95,896.*
5. *That again the AO has made the addition of Rs. 10,22,000/- on account of deposit of currency during 09/11/2016 to 30/12/2016.*
6. *That the CIT(A) has also grossly erred in confirming the addition of Rs. 12,17,896/- made by the AO. As such the addition made by the AO and confirmed by the Ld. CIT(A) may be deleted.*

7. *That the authorities below did not appreciate that the assessee was carrying on retail business of readymade garments under the name & style of 'Lucky Di Hatti' and the return was tiled therein declaring an income of Rs.2,98,856/- by applying the provisions of section 44AD. The addition made is unjustified and uncalled for and the same may be deleted. Alternatively, the order is liable to be cancelled as the Ld. CIT(A) has not decided the issue on merits. Alternatively the addition made is very high and excessive.*
8. *That any other ground of appeal which may be argued at the time of hearing of the appeal.*

3. During the proceedings before us, ld. Counsel for the Assessee submitted that the assessment order passed by the Assessing Officer in this case is an ex-parte order u/s 144 of the Income Tax Act, 1961 (in short 'the Act'). The ld. counsel has also filed written submission on this issue which is as under:-

“It is further relevant to point out that the AO has not given any opportunity of being heard and no notices were received in time because of turmoil on 05/08/2019 onwards. We were under strict curfew and also due to blockade of internet and mobile services. It is worth relevant to point out that Union Home Minister on 05/08/2019 took a decision to

abrogate Article 370 from Jammu & Kashmir. On account of introduction of this Bill, there has been complete violence in Kashmir and there was internet shut down for 145 days in Kashmir. Even there has been blackout for 145 days after the Centre Govt, abrogated Article 370 of the constitution. As such, it was not possible to comply with the notices as the circumstances were beyond the control of the assessee. Thus, the CIT(A) confirmed the addition without appreciating the facts of this case and without application of mind inspite of the fact that the books of accounts were regularly maintained and return of income was filed.

The Assessment order was passed u/s 144 vide order dated 02/12/2019. Thus, it is clear that the life was abnormal in those days. The AO should have taken into consideration all the facts while passing the order.

4. The ld. CIT(A) has dismissed the appeal of the Assessee and he has confirmed the addition made by the Assessing Officer in by passing ex-parte order.
5. The ld. DR relied on the order of the ld. CIT(A).

6. We have considered the findings given by the Assessing Officer in his ex-parte assessment order and the findings given by the ld. CIT(A) in appellate order. We have also considered the written submissions filed by the Counsel of the Assessee during the proceedings before us. We find that as per the Counsel of the Assessee, the Assessee could not get any notice because of the strict curfew in Kashmir Valley of Jammu & Kashmir, because of the abrogation of Article 370, and the assessment pertains to that period only. Therefore, we are of the considered view that the Assessee could not get any opportunity to bring his side of story and file the relevant documents before the Assessing Officer during the assessment proceedings. We also find that the ld. CIT(A) has not considered the facts that the Assessee could not get notice because of the curfew imposed in the valley at that point of time and the CIT(A) has simply confirmed the addition made by the Assessing Officer in his ex-parte order. Therefore, keeping in view the element of natural justice to the Assessee, we are of this considered view that the matter should be remanded back to the file of the Assessing Officer to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the A.O. All pleas available

under the law shall remain so available to the assessee. Ordered accordingly.

7. In the result, appeal is allowed for statistical purposes.

Order pronounced on 15.01.2025

Sd/-  
( UDAYAN DAS GUPTA )  
Judicial Member

Sd/-  
( KRINWANT SAHAY )  
Accountant Member

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar