

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH DB AGRA**

**BEFORE SH.RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.179/AGR/2024
Assessment Year: 2017-18

Bharat Singh Yadav S/o Sh. Hetam Singh Yadav, 11/E/6 C/1, Mohan Nagar, Firozabad Road, Agra 282006 Uttar Pradesh PAN No.AAZPY7291E	Vs.	CIT (Appeals) National Faceless Appeal Centre, N.A
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Raj Kumar Agarwal, CA
Respondent by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing:	16/01/2025
Date of Pronouncement:	28/01/2025

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the National Faceless Appeal Centre [hereinafter referred to as "NFAC"] vide order dated 11.03.2024 pertaining to A.Y. 2017-18 pertaining to arises out of the assessment order

dated 16.05.2023 of the Income – tax Act, 1961 [hereinafter referred as ‘the Act’].

2. The assessee has raised following grounds of appeal :

1. *That the Hon'ble CIT(Appeal) NFAC has erred in Law and on facts in passing the Order u/s 250 of The Income Tax Act 1961 without considering the facts and materials available on record because:*

a. that there cannot be two different Form 26AS of the same Assessee for same financial year 2016-17. One which is in possession of the assessee as issued by Income Tax Department through Traces Site showing contract receipt of Rs. 1,36,08,022 from M/s MPR Constructions (TAN HYDM03210E) and another Form 26AS of the Assessee for the same financial year 2016-17, as stated in "Assessment Order of AO dated 16.05.2023, para 1 Facts of the Case", in possession of DCIT Central Circle 2 Noida showing payment of same Contract amount of Rs. 1,36,08,022/- from Shiv Shakti Constructions (PAN AAZFS6406R). It is further to be noted that Form 26AS do not show any PAN of the deductor, it shows only TAN number of the deductor.

b. Para 1 of Assessment Order dated 16.05.2023 passed by AO Faceless Assessment Unit, containing Facts of Case, reproduced herewith as follows:

Facts of the case in brief:

In this case, the information forwarded by the DCIT, central Circle-2 Noida to Jurisdictional Assessing Officer that the

assessee has not shown the receipts of Rs. 1,36,08,022/-, received from M/s Shiv Shakti Constructions, out of total gross receipt as per 26AS during the F.Y. 2016-17 Case of assessee for AY 2017-18 was accordingly reopened u/s 147 of the Act.

c. While framing the case u/s 147 of the Act, The Hon, able DCIT Central Circle 2 Noida, considers PAN only which is nowhere exist in Form 26AS and no TAN has been considered. It, indicates that Hon'able DCIT Central Circle 2 Noida, had reopened the assessment without any concrete evidence in his possession and there does not exist any Form 26AS which contains Receipt of Rs. 13608022/- from M/s Shiv Shakti Constructions. The Form 26AS on the basis of which it is estimated that receipt of Rs. 13608022/- has escaped assessment is nowhere in possession of Hon'ble DCIT and as such, reopening is void ab Intio. Hence the Income assessed by AO wide Assessment Order dated 16.05.2023 is void ab intio and therefore, such added income be deleted. The Form 26AS which is in possession of DCIT had not been forwarded to the assessee.

d. Further, it may be possible that Form 26AS may show receipts of Rs. 13608022/- from MPR constructions as well as receipts of same amount of Rs. 13608022/- from Shiv Shakti Constructions. But Form 26AS as issued by The Income Tax Department through Traces Site which is in possession of the Assessee, had not shown any such receipt of Rs. 13608022/- from Shiv Shakti Constructions. The Form 26AS which is in

possession of DCIT cannot be different from Form 26AS which is in possession of the Assessee because the issuing authority is same. Therefore there cannot be two different form 26AS of an Assessee for a same Financial Year. Hence the receipt as shown in Form 26AS which is possession of DCIT, must be from MPR Constructions and not from Shiv Shakti Constructions. This receipt of Rs. 13608022/- from MPR Constructions had been duly recorded in Income Tax Return of the Assessee.

2. That, It is very impossible that there exists two different Form 26AS of an Assessee for a same Assessment year when issuing authority is same, the Order of CIT(appeal) u/s 250 of The Act as well as Order of AO u/s 144 rws 147 of The Act is erroneous and Bad in Law and addition of Receipt of Rs. 13608022- u/s 69A of The Income Tax Act 1961 is not justifiable and injustice to the assessee.

3. That the Ld. AO has erred in law and on facts in making the impugned addition of Rs. 1,36,08,766/- as unexplained money under section 69A read with section 115BBE of the Act, in the hand of the appellant even when it is apparently shown in Form 26AS as received from MPR Constructions and not from Shiv Shakti Constructions ie, such receipts was fully explained with documentary evidence.

(Unexplained Money does not exists)

4. That any other relief or reliefs deemed fit in the facts and circumstance of the case may be granted.

5. The appellant craves leave to add, alter or vary the grounds of appeal before or at the time of hearing.

3. The brief facts of the case are that the assessee is a Civil Contractor and carry on his contractor business under name and style M/s. Bharat Singh Yadav, operating from 11/E/60, C-1, Mohan Nagar, Firozabad Road, Agra. He is mainly engaged in civil works of Road construction. The assessee has filed his return of income declaring total income of Rs 9,41,910/- on 30-03-2018 for the A.Y. 2017-18. After receiving the information, a notice u/s 148 of the Act was issued on 30-06-2021 after obtaining prior approval from the competent authority. A letter dated 19-05-2022 along with relevant material was send to the assessee by Jurisdictional Assessing Officer through speed post as well as on email. In the response of the notice of u/s 148 of the Act the assessee has failed to file the return of income. The Assessing officer has completed the assessment after making the addition of Rs.1,36,08,022/- u/s 69 A of the Act. Aggrieved the order of the AO the assessee has filed the appeal before the Ld. CIT(A)/ NFAC who vide his order dated 11-03-2024 dismissed the appeal, against which the assessee is in appeal before the Tribunal.

4. At the outset, the Ld. AR submitted that addition on receipt of Rs.13608022/- u/s. 69A was wrongly made by the AO. The M.P.R. construction has shown the receipts of the above, mentioned amount in the Form No. 26AS. The assessee has not received the any amount from the M/s Shiv Shakti Construction. The assessee has filed Form No. 26AS which has to be verified by the AO. He submitted that the Ld. CIT(A) has issued the notice to the assessee providing very short period of six days only and without giving the opportunity of being heard the Ld NFAC has dismissed the appeal of the assessee. Further, the Ld. AR submitted that one opportunity of being heard to be given to the assessee.

6. The Ld. DR has stated that the assessee has not co-operate with the lower authorities. The Ld. DR relied upon the orders of the authorities below.

7. We have heard the rival arguments and perused the material available on record. Perusal of the order of the Ld NFAC reveals that six days, notice was issued to the assessee and on the next date when the assessee has sought time to file the submission, the opportunity was closed. We find force in the contentions of the Ld. Counsel. In the interest of justice and

fair play we deem fit to restore the issue to the file of the Ld. NFAC/CIT(A) to decide the same in accordance with law after providing an opportunity of being heard to the assessee. The assessee is also directed to co-operate in the assessment proceedings.

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

Order pronounced in the open court on 28.01.2025.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

NEHA, Sr. PS
Date:-28.01.2025
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT AGRA