

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

(HYBRID COURT)

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

I.T.A. No. 381/Asr/2024
Assessment Year: 2017-18

Irfan Shah, Near SMC Office,
Main Bazar, Dalgate, Srinagar
Jammu & Kashmir

Vs.

Income Tax Officer,
Srinagar

[PAN: AUAPS 2837D]

(Appellant)

(Respondent)

Appellant by : Sh. Kundan Pandey for Sh. Vipul Arora C.A.
Respondent by : Sh. Manpreet Singh Duggal, Sr. D. R.
Date of Hearing : 07.04.2025
Date of Pronouncement : 21.04.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of Id. CIT (A) National Faceless Appeal Centre (NFAC), Delhi dated 29/01/2024 passed u/s 250(6) of the Income Tax Act, 1961 which has emanated from the order of the AO, Ward-1, Srinagar, dated 26.12.2019 passed u/s 144 of the I. T. Act, 1961.

2. **Condonation of delay:-** It is pointed out by the registry that the appeal has been filed belatedly by 95 days. The assessee has filed an explanation along with an affidavit praying for condonation of delay stating that the order of the Id. CIT(A) has been received on 29th January, 2024 and the statutory period has expired on 28th March, 2024 and the appeal has been filed on 2nd July, 2024 belated by 95 days. He submitted that he is a resident of Srinagar and falls under jurisdiction of the Assessing Officer, Srinagar, but most of time he is conducting his business in Kolkata, and he has handed over the papers and documents to his existing counsel at Srinagar for filing the appeal before the Tribunal. However, he submits that the existing counsel at Srinagar *Mr. Ishfaq Bin Nazir* located at Srinagar was not legally competent enough about the filing of appeal before the Tribunal, and as such the said appeal could not be filed till 28th June 2024. Later on, on reference he contacted Mr. Vipul Arora, chartered accountant, who guided him to prepare and file this appeal before the Tribunal on 2nd July, 2024. As such, he prays that the delay in filing this appeal was not intentional and there was no willful neglect on his part and he has relied upon a professional consultant for filing the appeal in time but the same could not be done, which has resulted in this delay. He prays for condonation of the delay and for admission of the appeal to be decided on merits.

3. The Id. DR has no objection.

4. Considering the factual event and reasons stated in the affidavit we condone the delay and admit the appeal for hearing on merits.

5. The grounds of appeal taken by the assessee in form 36 are as follows:

- “1. That the Worthy Commissioner of Income Tax (Appeals) has, in view of the facts and circumstance of the case, grossly erred in confirming addition of Rs.3240500 on account of cash deposited during demonetization period and Rs. 821594/ being 5% of turnover of Rs.16431878 ignoring taxable income of Rs. 400000 returned by the appellant.
2. That the Worthy CIT (A) erred in not considering the statement of facts and grounds of appeal filed by the appellant and made appeal order without any discussion on the merits of the case and simply dismissed the appeal in limine. That the Worthy CIT(A) has passed the order against the settled principles that the CIT(A) should have dealt with the merits of the issue in appeal, even in the case of an ex-parte order.
3. That the Worthy CIT(A) erred in confirming the invocation of Section 69A and Section 115BBE of the Income Tax Act, 1961.
- 4 That the appellant craves leave to add, amend, modify or withdraw the grounds of appeal before the appeal is finally heard.”

6. On the date of hearing before the Tribunal, there was no appearance of the Id. AR of the assessee but an application for adjournment of the case has been filed.

7. We find from the record that no purpose will be served in adjourning the case, because the order of the Id. first appellate authority has been passed ex-parte

dismissing the appeal in absence of any response to the notices issued by the office of the first appellate authority on 7 (seven) separate dates of hearing as evident from the appellate order (*page 2 para 3*). However, it is seen that that all the notices has been issued in the ITBA Portal and none of the notices has bee issued through the e-mail id provided in Form 35.

8. As per the law laid down by the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship v CIT(E) Chandigarh CWP No 21028-2023(O & M) dated 4th March, 2024*, services in ITBA Portal is not considered to be proper service and the same needs to be done as per the provisions of section 282 of the Act (*read with rule 127 of the I.T. Rules*). Moreover, it is also seen the Id. CIT(A) has not decided the issues on merits of the case in absence of any proper documents or submissions before him.

9. The brief facts of the case are that the assessee is engaged in the trading business of Kashmir Handicrafts and it is seen that during the demonetization period an amount of Rs.32,40,500/- has been deposited in cash by the assessee in his bank account which has remained unexplained before the Assessing Officer who has also passed the order ex-parte in absence of any response to various notices issued by the A.O. in course of assessment proceedings. The cash deposits in bank during the demonetization period has to be explained out of availability of cash in regular cash

book on the date of demonetization and as such considering the facts of this case, we deem it fit and proper to set aside the matter back to the files of the Id. first appellate authority to adjudicate on the grounds contained in Form 35 on merits (*after calling for necessary reports from the Assessing Officer as required as per the provisions of law*) and the assessee is also directed to file all necessary papers and documents before the authority below in course of appellate proceedings to explain his case and to fully co-operate in appellate proceedings.

10. The Id. DR has no objection if the matter is remanded back to the Id. CIT(A) for adjudication on merits.

11. Needless to say, the assessee will be allowed a proper and reasonable opportunity of being heard.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 21.04.2025

Sd/-
(Krinwant Sahay)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned

(4) The Sr. DR, I.T.A.T

True Copy
By Order