

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

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
(Hybrid Hearing)**

**I.T.A. No. 590/Asr/2024
Assessment Year: 2017-18**

Sh. Mudasir Ahmad Shaksaz, Rajpora Pulwama Jammu & Kashmir. [PAN:-GSXPS7625J] (Appellant)	Vs.	ITO, Ward Anantnag. (Respondent)
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Appellant by	Sh. Bashir Ahmad Lone, CA.
Respondent by	Sh. Charan Dass, Sr. DR

Date of Hearing	30.06.2025
Date of Pronouncement	07.07.2025

ORDER

Per: Udayan Dasgupta, J.M.:

This appeal filed by assessee against order of Ld. CIT (A), NFAC, Delhi, passed u/s 250 of the Act 1961, dated 09.01.2024 which has emanated from the order of the AO, Ward Anantnag, dated 17/12/2019, passed u/s 144 of the Act.

2. Condonation of delay:

It is pointed out by the registry that this appeal is filed belatedly by 237 days. The assessee has filed the application for condonation, alongwith an affidavit stating that

no notice has been issued and served on the assessee by the office of the Id. first appellate authority. He further submitted that the e-mail ID stated in form 35 to which notice should have been issued was suhailabc1234@gmail.com but notice has been issued on a different e-mail ID riyazdar8889@gmail.com. This incorrect belongs to one of the accountant of the assessee who is no more in service and the assessee has not been informed by the said person regarding the outcome in appeal and as such, the assessee was totally unaware of the existence of the said appellate order. Subsequently, gathering information from the department regarding the outcome of the appeal the assessee took necessary steps to prepare and file this appeal belated by 237 (two hundred thirty seven) days. As such, he prays for condonation of the delay and for admission of appeal to be heard on merits. The Id. DR has no objection. Considering the fact that the order has been issued in the incorrect *e-mail id* for which the assessee cannot be faulted, and in absence of any wilful default or neglect on the part of the assessee, the delay is condoned and the appeal is admitted to be heard on merits.

3. The grounds of appeal in Form No. 36 are as under:

“1. The Ld. CIT(A) erred in both facts & laws by upholding the order of AO in an arbitrary manner, without deciding the appeal on merits, which he is not empowered.

2. *The Ld. CIT(A) erred in both facts & laws by upholding the order of AO in an arbitrary manner, when the appellant did not get real opportunity both during the assessment proceedings and appeal proceedings*

3. *The Ld. CIT(A) erred in both facts & laws by confirming the addition of Rs 1,73,431.00 u/s 69 of the Act in an arbitrary manner, when the cash deposits represent sale of Airtel recharge duly accounted in the books of accounts.*

4. *The Ld. CIT(A) erred in both facts & laws by confirming addition of Rs 15,44,016.00 as 8% on balance bank credits, when the appellant has not earned more than 1% of gross margin on sales*

5. *The assessment is based on mere presumptions and conjectures.*

6. *Assessee craves right to add, alter or modify any grounds of appeal before or at the time of hearing of the appeal.”*

4. The brief facts emerging from record are that the assessee has deposited cash in Jammu & Kashmir Bank, Pulwama account number XXXXX000189, amounting to Rs.11.73 lakhs during demonetisation period and no regular return has been filed. Proceedings were initiated u/s 142(1) of the Act calling for return of income but in

absence of any response from the assessee to various notices issued by the department the assessment was ultimately completed at a total income of Rs.27.17 lakhs (which included the amount of Rs.11.73 lakhs u/s 69A of the Act and further amount of Rs.15.44 lakhs being the business profit estimated @8% on the remaining deposits).

5. The matter was carried in appeal before the Id. CIT(A) and the first appellate authority has dismissed the appeal in absence of any response from the assessee in course of appellate proceedings. It is seen from the appellate order that notices of hearing has been issued on 5 (five) different dates of hearing, which as per the assessee has been issued to a wrong *e-mail id* and no notice of hearing has been issued in the *e-mail id provided in form no. 35*.

6. In course of hearing the Id. AR of the assessee submitted an application under Rule 29 of ITAT, Rules 1963, and a paper book consisting of printout of the entire *cash book, sale ledger, purchase ledger* alongwith other *financial statement* and submitted that the assessee is engaged in the business of sim car distribution and recharge vouchers under the *Bharti Airtel Ltd*. He further submitted that the cash deposited in bank account during demonetisation period are all reflected in the cash book and has arisen out of regular sale proceeds which are supported by necessary documentary evidences issued by the parent company *Bharti Airtel Ltd*. He prayed that since no proper opportunity was allowed in course of appellate proceedings, the

notice being not issued in the proper e-mail id, as per form 35, he prayed for a fresh opportunity of hearing.

7. The ld. DR relied on the order of the ld. CIT(A) but has no objection if the matter is remanded back for fresh adjudication.

8. We have heard the rival submission and considered the materials available on record. We find that notice from the office of the ld. first appellate authority has not been issued in the proper e-mail id as mentioned in form 35 which has resulted in non-service of the notice.

8.1 We further find that in the instant case, ex parte order has been passed by the AO where the matter has gone unrepresented and on this issue the submission of the ld. AR was that during the year 2019 proper representation was not possible because of disturbance in the Kashmir Valley.

8.2 Moreover, we also find that cash deposited in bank during the demonetisation period needs to be explained by producing *cash book, documentary evidences of purchase and sales* and other relevant documents. As such, we are of the opinion that justice will be served if the matter is remanded back to the file of the AO for fresh assessment after considering all documentary evidences to be produced by the assessee before the AO. The assessee is also directed to produce all necessary documentary evidences including books of accounts to support his case, and the assessee will be allowed reasonable opportunity of being heard.

8.3 We have not expressed any opinion on merits, all legal issues are left open.

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

**Order pronounced on 07.07.2025 under Rule 34(4) of the Income Tax Appellate
Tribunal Rules 1963.**

Sd/-

(MANOJ KUMAR AGGARWAL)
Accountant Member

Sd/-

(UDAYAN DASGUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

