

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

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
AND SH. BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**I.T.A. No. 174/Asr/2024
Assessment Year: 2017-18**

Ayoub Naik, Near Masjid Shareif, Nehama Damhal Hanjipora Kulgam J & K. [PAN:-AVNPN5858M] (Appellant)	Vs.	ITO, Ward, Srinagar. (Respondent)
---	-----	--

Appellant by	Sh.Bashir Ahmad Lone, CA.
Respondent by	Sh. Charan Dass, Sr. DR

Date of Hearing	27.05.2025
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 dated 06.02.2024 which has arisen from the order of the AO Ward Anantnag passed u/s 144 of the Act dated 19.12.2019.

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

“1. The order is bad in law, as no real opportunity was granted to appellant during the assessment proceedings &

appellant could not avail the opportunity before CIT(A), as communication was not received by appellant.

2. *The Ld. CIT(A) erred in both facts & Laws by confirming addition of Rs 46,57,490.00 u/s 69 of the Act on account of entire cash deposits made during the demonetization period, as the entire cash deposits represent sales made in ordinary course of business^*

3. *The Ld. AO erred in both facts & Laws by applying net profit rate of 8% on balance bank credit, when the assessee profits are comparatively low.*

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

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

3. The brief facts emerging from the record are that the assessee is engaged in the business of retail trade of MS/HSD (Petrol Pump under Indian Oil Corporation Ld.), under the name of *M/s Naik Filing Station*, located at Kulgam in the state of Jammu and Kashmir. During the F.Y. 2016-17 an amount of Rs.46,57,490/- has been deposited in cash in *J & K Bank Ltd. a/c no. 000164* during the demonetisation period and the total deposit for the entire F.Y. by way of cheque and cash amounted to Rs.3.80 crores. In absence of any return of income, notice u/s 142(1) was issued calling for the return, but in absence of any response from the assessee to various notices issued from the department, the AO completed the assessment ex parte on

total income of Rs.73,28,220/- (including an amount of Rs.46,57,490/- being the addition u/s 69A for cash deposited during the demonetisation period (+) an addition of Rs.26.70 lakhs as estimated business profits @ 8% (eight percentage) of the balance deposits).

4. The matter was carried in appeal before the ld. CIT(A) and the ld. CIT(A) has dismissed the appeal in absence of any response filed by the assessee in course of appellate proceedings. It is seen from the appellate order (*page 5*) that notices has been issued on three separate dates vide e-mail apart from posting the same in ITBA portal.

5. Now, the assessee is before the tribunal on the ground contained in the memorandum of appeal.

6. The ld. AR of the assessee submits that the assessee is the owner of the petrol pump and is engaged in the business of retail trading of MS/HSD (*under Indian Oil Corporation Ltd.*). He has submitted a paper book containing 116 pages alongwith an application for entertainment of additional evidence under Rule 29 of the ITAT Rules 1963. He has also filed copies of proof of business being certified by the IOC Authorities alongwith copies of balance sheet and other financial statements declaring a total *sale proceeds of 4.10 crores* for the year under appeal and a net profit of 2,95,150/- from the petrol pump business. However, it is admitted that no

return of income has been filed and no response could be made before the AO in course of assessment proceedings because of disturbance prevailing in the *Kashmir valley* during the year 2019.

6.1 The assessee has submitted copies of the print out of the cash book alongwith the copies of bank statement maintaining with J & bank and also copies of bank statement maintained with PNB bank (a/c no. 2137), and he explained that the entire cash deposit in the bank account has arisen out of the normal business trading activities of the assessee and the entire business transactions are duly recorded in the cash book. He further pointed out to the debit entries in the bank statements, to show that the withdrawal from bank account has been transferred to *Indian Oil Corporation Ltd. (IOC)* by way of RTGS for purchase of petroleum products. He further submitted that as per CBDT notification petrol pump dealers were allowed to accept SBN currency till 15th December 2016 (*vide Gazette Notification No. 2653 dated 8.11.2016*) and as such, the Id. AR submits that the cash deposit in the bank account are duly reflected in the cash book and has been sourced out of regular sale proceeds of the assessee, from the retail outlet of M.S. and H.S.D.

6.2 He further submitted that since the assessee has not availed the opportunity allowed by the AO as well as by the first appellate authority in course of appellate proceedings due to non-cooperation of the counsel appointed by the assessee

himself, and he prays that a fresh opportunity may please be allowed in order to present his case with proper documentary evidences for explaining the cash deposit in bank during the demonetisation period and for proper assessment after considering his regular books of account invoices, bills, vouchers bank statements and such incidental documentary evidences along with audited accounts.

7. The Id. DR relied on the order of the Id. CIT(A) and submitted that in the instant case, the notice of hearing from the office of the Id. first appellate authority has been issued in the e-mail ID provided in Form No. 35 and also in the ITBA portal.

7.1 He further stated that in the instant case, the contention of the assessee regarding his counsel is not factually correct because the e-mail ID as stated in Form No. 35 belongs to the counsel himself and there is no reason as to why the said compliance has not been made by the counsel appointed by the assessee himself. In other words, he wanted to state that in the instant case, there is no fault of the Id. first appellate authority and notice has been issued and served as per provisions of section 282 of the Act (*r.w.r. 127 of the IT Rules*) and as such the prayer of the assessee is not acceptable.

8. We have heard both the counsels and considered the materials on record and we find that the paper book filed by the assessee alongwith an application for

additional evidence under Rule 29 of the ITAT Rules 1963 are all fresh documents which has never been filed before the lower authorities and for all practical purpose these documentary evidences needs to be verified alongwith entries in the books of account and the cash deposit during demonetisation period is to be explained by the assessee with reference to regular books of account and cash book. As such, in the interest of justice we remand the matter back to the file of the Id. CIT(A) for adjudication on merits of the case, on the ground contained in form 35 after taking into consideration all documentary evidences and the books of account to be produced by the assessee for proper explanation of his case, after calling for necessary report from the AO as per provisions of law.

8.1 Before concluding we find that in the instant case, the Id. CIT(A) issued the notice in ITBA portal and also in the *e-mail ID provided in form 35*, as confirmed by the Id. DR, and the present counsel also admitted to the same. As such, we find that in the instant case, there has been intentional non-cooperation or intentional non compliance on the part of the assessee and as such, we impose a token cost of Rs.5,000/- (Rs. Five thousand) on the assessee to be deposited to the credit of the *Prime Minister National Relief Fund*, within 30 days, (thirty) from the receipt of this order, evidence to be produced before the jurisdictional AO.

8.2 With the above observation, we remand this case back to the file of the Id. CIT(A) for fresh adjudication on merits of the case and we also direct the assessee to file all necessary papers and documents in support of his case before the Id. CIT(a), and to fully cooperate in fresh appellate proceedings.

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/-

(BRAJESH KUMAR SINGH)
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

