

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

**(HYBRID COURT)**

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

**I.T.A. Nos. 646 to 648/Asr/2024**

Assessment Year: 2017-18

Mushtaq Ahmad Zargar,  
H. No. 286, Afandi Bagh Near  
Masjid Abu Bakar, (Near Nikah  
Marriage Hall) Sanat Nagar,  
Byepass Srinagar 190005

[PAN: AAPPZ 4348F]

**(Appellant)**

Vs.

Income Tax Officer,  
Ward - 1, Srinagar

**(Respondent)**

Appellant by : Sh. Bashir Ahmad Lone, C. A.

Respondent by : Sh. Charan Dass, Sr. D. R.

Date of Hearing : 07.07.2025

Date of Pronouncement : 21.07.2025

**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 30.09.2024 passed u/s 250 of the Income Tax Act, 1961 which has emanated from the order of the ITO, Ward-1, Srinagar dated 24.12.2019 passed u/s 144 of the I.T. Act, 1961.

2. Grounds of appeal taken by the assessee in ITA No. 646/Asr/2024 in Form No. 36 are as follows:

- “1. *On the facts and in the circumstances of the case, the Ld. CIT(A) upheld the order of AO in an arbitrary manner, which was passed by AO without application of mind & without granting real opportunity to appellant.*
2. *The Ld. CIT(A) upheld the additions made u/s 69A of the Act amounting to Rs 20,94,115.00 on account of cash deposits made in the bank account No. 0361020100000171 without application of mind, when the said bank account doesn't belong to appellant rather to firm M/s Alnoor Trading Co. PAN AARFA0348N which has filed its ITR within due date & these transactions are accounted in their books of accounts.*
3. *The Ld. CIT(A) upheld the addition of Rs 84,27,268.00 by applying Net Profit rate of 8% on the balance bank transactions made in the Bank account No. 0361020100000171 when the said bank account. does not belong to appellant rather to firm M/s Alnoor Trading Co. PAN AARFA0348N which has filed its ITR within due date and these transactions are accounted in their books of accounts*
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.”*

3. Brief facts emerging from the record are that the assessee individual is a partner in the partnership firm *M/s Alnoor Trading Co.*, Srinagar Kashmir [PAN: *AARFA 0348N*]. The partnership firm is engaged in the trading of Fast Moving Consumer Good (FMCG) and consisting of two partners namely the assessee *Sh.*

*Mushtaq Ahmad Zargar and his wife Mrs. Sahina Syed both having equal shares in the partnership. It is seen from the paper book submitted by the assessee, that the partnership firm M/s Alnoor Trading Co., is separately assessed to tax, (under PAN: AARFA 0348N) and has filed its income tax return along with the copies of tax audit report and audit financials on 17.07.2017, for the Assessment Year 2017-18 and from the copy of the audited balance sheet, it is seen that the Bank A/c No. xxxxxx000171 with J & K Bank Ltd. Rawalpora branch Srinagar is in the name of partnership firm, and the statement issued by the bankers are also on record. It is also observed from the certificate issued by the Branch Manager of the Bank dated 22.02.2024 that the partnership is availing cash credit facility from the said bank and the Bank Account of the partnership firm is linked with PAN: AARFA 0348N (which is the PAN of the partnership firm).*

4. On the other hand, based on some information received by the Assessing Officer that cash is deposited in the above *cash credit account* maintained with J & K Bank, amounting to Rs.20.94 lakhs (*during demonetization period*), notices has been issued to the assessee (individual) u/s 142(1) of the Act calling for return of income and in absence of any compliance on the part of the assessee, ex-parte order has been passed determining a total income of Rs.1.05 crores (*including amount of Rs.20.94 lakhs u/s 69A of the Act plus addition of Rs.84.27 lacs calculated @ 8% on the balance credit in the said bank account excluding the demo period*).

5. The matter was carried in appeal before the first appellate authority and even though written submissions has been filed by the assessee, explaining the entire facts of the case regarding existence of the partnership firm and the cash deposits in bank accounts relating to the partnership firm engaged in trading business, the Id. CIT(A) has dismissed the appeal by observing as follows:

*“A registered partnership must be established through a Partnership Deed that is registered with the Registrar of Firms. The firm is a separate business entity having separate PAN, registration certificate, Partnership deed, Power of Attorney granted to a partner or an employee of the firm to transact business on its behalf, any officially valid document identifying the partners and the persons holding the Power of Attorney and their addresses, Telephone bill in the name of firm/partners.*

*In the present case, no partnership deed of the firm has been submitted, neither the return of the partner (wife) has been submitted to assess the correct income of the Individual assessee the partnership concern does not have separate bank account, the account linked with the PAN of its Partner (the appellant) was given as the business account i.e. 03610202100000171 in J&K Bank Rawalpura. The Business receipts were claimed to be of the firm concerned having no separate bank account. The settled law says that the registered firm must have separate business bank account. The business receipts should pertain to firm's PAN and should reflect in its bank account only. But in the present case, there is no separate Bank account of the firm and the amount as added by A.O reflects in the PAN of the appellant. The appellant also has not submitted if he had filed his ITR on his PAN or not. The appellant in the present case though the authorized signatory on behalf of the Partnership firm but it is necessary that all the sales and other financial needs should be fulfilled solely from firm's bank account which in the present case is not fulfilled. No books of accounts of the firm or the individual has been submitted for verification. Since the appellant had shown net profit at 1.67% which is extremely low in such business if compared with similar businesses. The need for verification of expenses was obligatory for*

*A.O. Due to non-compliance of the appellant, the verification could not be done and hence the invoking of section 44AD in the present case is reasonable. The appellant has also not given any specific reasons for such low net profit alongwith evidences.*

*Therefore, the low net profit under contention still remains unverified and is subject to tax under the provisions as charged by A.O under the Income Tax Act. Therefore, I uphold the assessment of A.O to add 8% of the sales turnover (Rs.10,53,40,850/-) of the business proceeds and addition of Cash deposited during demonetization period to the tune of Rs. 20,94,115/- for want of verification and evidences under the provision of Income Tax Act, 1961.”*

6. Now, the assessee is in appeal before the Tribunal on the grounds contained in the memorandum of appeal and has reiterated the same submission and has submitted that the cash deposit during the demonetization period in the aforesaid bank account belong to the partnership firm *M/s Alnoor Trading Co.*, which is separately assessed to tax and has referred to all the documentary evidences contained in the paper book in support of his contention along with the copies of the partnership deeds, audited accounts for the financial year 2016-17 and copies of all bank statements in the name of the partnership firm which also includes the disputed *cash credit A/c No. xxxxxx000171*. He further submitted that the assessment on the basis of bank deposits made by the Assessing Officer is factually incorrect and the entire bank deposits contained in the bank statement which is subject matter of dispute in this appeal belongs to the partnership firm and all entries contained in the said account are duly reflected in the regular books of account of the firm and the cash deposits in bank are

part of the sale proceeds of the firm disclosed in its audited account which is already assessed to tax separately, and as such he prays for deleting the addition wrongly made.

7. The ld. D.R. relied on the order of the ld. CIT(A) and submitted that the assessee has failed to produce books of account and other documents and has quoted his individual PAN to the bank account under reference and he prayed for upholding the order of the appellate authority.

8. We have heard the rival submissions and considered the materials on record and we find from the bankers certificate placed at *page no. 1 of the paper book* that the said particular bank account which is under dispute, is a cash credit account in the name of the partnership firm *M/s Alnoor Trading Co.*, and the same is also reflected in the audited balance sheet of the partnership firm as cash credit account and the balance as reflected also matches with the closing balance of the bank statement. We have also looked into the tax audit report in firm 3CB and 3CD and the copy of the partnership deed, copies of VAT returns, placed in the paper book and we are of the opinion that all documents belongs to the partnership firm which is separately assessed to tax under PAN: AARFA 0348N, and the assessee is simply a partner in the said firm.

9. However, we also find that all these documents contained in the P.B. has not been filed before the Assessing Officer of the (*individual assessee*) in course of assessment proceedings and as such the authenticity of these documents has remained unverified by the AO. In the interest of justice, we are of the opinion that the matter should be remanded back to the files of the Assessing Officer for examination of all documentary evidences submitted by the assessee and for fresh assessment as per provisions of law after considering the fact that the bank account under dispute is related to the partnership firm and not to the assessee.

10. The assessee is also directed to fully cooperate in fresh assessment proceedings and to file all necessary documentary evidences in support of his contention and to explain the source of cash deposited in bank account during the *demonetization period* which according to the assessee belongs to the partnership firm and all transactions duly recorded in the books, and the assessee is just a partner in the said firm.

11. With the above observations, we set aside the matter back to the files of the Assessing Officer for fresh assessment on the merits of the case, after providing reasonable opportunity to the assessee of being heard.

12. In the result, the appeal of the assessee is allowed for statistical purpose.

**In ITA No. 647/Asr/2024 for AY: 2017-18:**

13. This appeal is filed by the assessee against the order of the Id. CIT(A) NFAC, Delhi dated 30.09.2024, confirming the penalty imposed by the AO u/s 270A of the Act for alleged under reported income u/s 270A and imposing penalty of Rs.12,11,888/-.

14. Since, we have remanded the quantum appeal back to the files of the Assessing Officer for fresh adjudication on merits of the case, we also set aside this penalty matter back to the files of the AO for decision afresh as per the outcome in quantum assessment.

**In ITA No. 648/Asr/2024 for AY: 2017-18:**

15. This appeal is filed by the assessee against the order of the Id. CIT(A) NFAC, Delhi dated 30.09.2024, sustaining the amount of penalty imposed u/s 271B of the Act for non-filing of tax audit report.

16. Since, we have set aside the quantum assessment back to the files of the Assessing Officer for fresh assessment on merits, we also remand this penalty matter back to the files of the Assessing Officer for fresh consideration on the basis of outcome of the quantum proceedings.

17. In the result, all the three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 21.07.2025

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**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