

**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. 87/Asr/2025
Assessment Year: 2017-18**

Zaffer Ullah Shah, S/o Abdul Gani Shah Khokhar Complex, Distt. Police Line Street, Doda, J & K. [PAN:-DFLPS6986A] (Appellant)	Vs.	ITO, Ward,2(4), Udhampur. (Respondent)
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Appellant by	Sh. P. N. Arora, Adv.
Respondent by	Sh. Charan Dass, Sr. DR

Date of Hearing	09.07.2025
Date of Pronouncement	18.08.2025

ORDER

Per: Udayan Dasgupta, J.M.:

This appeal is filed by assessee against order of Ld. CIT (A), NFAC, Delhi, passed u/s 250 of the Act 1961, dated 24.01.2025 which has emanated from the order of the AO, Ward-2(4), dated 20/11/2019, passed u/s 144 of the Act.

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

“1. That the assessment order passed by the Assessing Officer as well as the order of the Learned Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi thereby confirming the order of the Assessing Officer are both against the facts of this case and are untenable under the law.

2. *That no reasonable and proper opportunity of being heard was allowed by the Assessing Officer before passing the said order. As such the assessment order passed is bad in the eyes of law and the same is liable to be cancelled and similarly the Ld. CIT(A) has confirmed the order of the AO without application of mind and as such the order passed by the worthy CIT(A) is also bad in the eyes of law and the same is liable to be cancelled.*

3. *That the ex-parte order passed u/s 144 is bad in the eyes of law as no notice u/s 142(1) was ever served on the assessee and as such the provisions of section 144 are not at all applicable to the present facts and circumstances of this case. The CIT(A) further did not appreciate that the AO has not followed the CBDT Circular F.No. 225/363/2017- ITA.II dated 15/11/2017 in which it was also directed that the notice u/s 142(1) shall be issued electronically as well as through Postal Services. As such the assessment order passed is bad in the eyes of law and the same deserves to be cancelled.*

4. *That the authorities below did not appreciate that in those days in Jammu & Kashmir, there was a grave problem in the working of internet in J&K. The Parliament of India voted in favour of a resolution tabled by Home Minister Amit Shah to revoke the temporary special status granted in Article 370 of the Indian Constitution to Jammu & Kashmir. It may be submitted*

that as a result of this amendment, the whole J&K was disturbed and even the normal life was paralyzed. There was no regular working in Jammu & Kashmir. As a result, thereof the whole business working of J&K was completely disturbed. As a result of this the notices could not be received and could not be complied. As such • there was no justification in deciding the case ex-parte by invoking the provisions of section 144. As such, the Ld. CIT(A) was not justified in confirming the order of the AO and the addition made may be deleted.

5. *That the CIT(A) was not at all justified in invoking the provisions of section 249(4) for the first time and accordingly thereby rejecting the appeal without giving any reasonable opportunity of being heard. The worthy CIT(A) should have allowed an opportunity of being heard in view of the provisions of section 249(4). The order of the Ld. CIT(A) is purely based on conjectures, surmises and suppositions and the same is liable to be cancelled.*

6. *That the CIT(A) did not appreciate that the addition of Rs. 14,67,127/- [i.e. Rs.398127/- + Rs.1069000/-] was not at all called for and he should have deleted the addition. A sum of Rs.2,67,500/- was deposited on 15/02/2020 and accordingly the stay was granted vide letter dated 25/01/2020. Under the same and similar circumstances, the tribunal has set aside several orders passed by the CIT(A) by invoking he provisions of section 249.*

3. The brief facts emerging from record are that the assessee has deposited cash amounting to Rs.10.69 lakhs in SBN notes in his various bank accounts during the demonetisation period and a total deposit of Rs.28.46 lakhs in the entire F.Y. 2016-17 in his J & K Bank A/c Gonda (A/c xxxx000693). In absence of any response to notices issued by the AO thereby resulting in a failure on the part of the assessee to explain the source of cash deposit, the assessment was completed on a total income of Rs.14.67 lakhs (*including an addition of Rs.10.69 lakhs u/s 69A of the Act being the SBN notes deposited*) plus an addition of Rs.3,98,127 (*being 8% profits*) on the remaining bank deposits.

4. The matter was carried in appeal and the Id. CIT(A) has dismissed the appeal by refusing to admit the same for adjudication on merits for non-payment of advance tax (*admitted tax*) coupled with fact that no return of income has been filed resulting in a violation of provisions of section 249(4)(b) of the Act 61.

5. In course of appeal proceedings before the tribunal the Id. AR of the assessee explain the fact that it is not correct that admitted tax is not paid, and he explained that an amount of Rs.2,67,500/- has already been deposited by the assessee on 15.02.2020 immediately after filing the appeal on 05.02.2020 (*challan No. 001 dated 15.02.2020 BSR 6320345*) and a copy of the said challan has already been submitted before the AO on 25.02.2020 praying for stay of demand. He further submitted that in course of first appellate proceedings the assessee has never been allowed an

opportunity to explain the non-payment of admitted tax. He further stated that the total income determined by the AO @ 8% on total turnover works out to Rs.3.98 lakhs (*as per assessment order without considering the SBN deposit*) and the assessee has already deposited Rs.2.67 lakhs in course of pending first appellate proceedings, which will be more than enough to cover the admitted tax if any. As such, he prays for an opportunity of fresh hearing before the Id. CIT(A) in order to explain his case.

6. The Id. DR relied on the order of the Id. CIT(A).

7. We have heard the rival submissions and considered the materials available on record and we find that the assessee has already paid an amount of Rs.2.67 lakhs on 15.02.2020 (*copy of challan is also enclosed*). The amount paid is certainly much more than the calculation of advance tax (*admitted tax*) required for filing of the appeal as provision of section 249(4)(b) of the Act. As such, we are of the opinion that the appeal filed before the first appellate authority is maintainable and we accordingly direct the Id. first appellate authority to admit the appeal and to adjudicate the case on merits on the grounds contained in Form 35. The assessee is also directed to file all necessary particulars and explanations alongwith documentary evidences in support of his contention as per his ground of appeal. The assessee will be allowed proper and reasonable opportunity of being heard and with

this aforesaid direction, we remand the matter back to the file of the Id. CIT(A) for adjudication of the appeal on merits of the case.

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

Order pronounced on 18.08.2025 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

