



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.736/LKW/2025
Assessment Year: 2017-18

Ashish Kumar S/o Onkar Nath, Bardehra Bharigan, Pathpur, Ekauna Shravasti (U.P)	v.	The ITO-1 Bahraich
TAN/PAN:DEQPK8563B		
(Applicant)		(Respondent)

Applicant by:	Shri Raghunath Mishra, Advocate
Respondent by:	Shri R.R.N. Shukla, D.R.

ORDER

This appeal has been preferred by the Assessee against the order dated 31.01.2024, passed by the National Faceless Appeal Centre, Delhi (NFAC) for Assessment Year 2017-18.

2.0 The brief facts of the case are that the assessee had not filed his return of income for the year under consideration. The Income Tax Department was in possession of information that the assessee had made cash deposits of Rs.11,50,000/- in his bank account No.4666020000005 maintained with Bank of Baroda, Bahraich, during the demonetization period. The case of the assessee was reopened under section 147 of the Income Tax Act, 1961 (hereinafter called "the Act") after issuing notice to the assessee under section 148 of the Act. However, there was no response from the side of the assessee to the notice issued under

section 148 of the Act. Thereafter, the Assessing Officer (AO) issued statutory notices to the assessee along with questionnaire, requiring the assessee to furnish the details of cash deposits made by the assessee in his bank account during the demonetization period. However, there was still no response from the assessee. The AO, thereafter, issued a show cause notice along with the Draft Assessment Order and since there was again no response to the show cause notice, the AO treated the entire cash deposits of Rs.11,50,000/- in the assessee's bank account as unexplained investment and added the same to the income of the assessee under section 69 of the Act. The AO completed the assessment under section 147 read with section 144 of the Act, computing the total income of the assessee at Rs.11,50,000/-.

2.1 The AO also invoked the provisions of section 115BBE of the Act and initiated penalty proceedings under sections 271AAC and 272A(1)(d) of the Act, separately.

2.2 Aggrieved, the Assessee preferred appeal before the NFAC, which dismissed the appeal of the assessee for the reason of there being a delay in filing of the appeal before the NFAC.

2.3 Now, the assessee has approached this Tribunal challenging the dismissal of its appeal by the NFAC by raising the following grounds of appeals:

1. *Because the order of Ld. CIT (A) is contrary to law, facts and circumstances of the case. The order of the Ld. CIT (A) is liable to be set-aside.*

2. *Because the Ld. CIT (A) has erred in dismissing the appeal, on the ground of not paying due Tax/Advance Tax by the appellant whereas the admitted Tax Liability is 'NIL' and the appellant was not liable to pay any advance tax in view of his income not exceeding the maximum amount not chargeable to tax. The order of the Ld. CIT (A) is without considering the actual and real facts on the ground and against the principles of natural justice therefore liable to be set-aside.*

3. *Because the addition of Rs.11,50,000/- made by the Assessing Officer u/s 69 in ex-parte assessment u/s 144 is contrary to facts, law & circumstances of the case and liable to be deleted.*

4. *The appellant reserves its rights to amend, delete or modify the present Grounds of Appeal in future in accordance with the law.*

3.0 The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted that there is a delay of 565 days in filing the appeal before the Tribunal. He further submitted that the assessee had filed an application dated 18.10.2025 for condonation of delay, duly supported by an Affidavit and Medical Certificate, stating therein that the assessee was on complete bed rest from 25.03.2024 as advised by the Doctor and that he was

declared fit on 17.10.2025 and that owing to this fact, the assessee could not file the appeal before the Tribunal within the stipulated period. The prayer of the Ld. A.R. was that the delay caused in filing the appeal was not deliberate and that it was beyond the control of the assessee, which may please be condoned and the appeal be heard on merits.

4.0 The Ld. Sr. D.R. objected to the delay being condoned.

5.0 In view of the prayer made by the Ld. A.R., I condone the delay in filing of the appeal and admit the appeal for hearing.

6.0 The Ld. A.R. submitted that the AO had passed the order under section 144 of the Act without affording reasonable opportunity of hearing to the assessee and had made the additions without bringing on record any material in support of the addition which was made on the basis of presumption and surmises only. It was further submitted that the NFAC dismissed the appeal of the assessee ex-parte qua the assessee. During the course of hearing, the Ld. A.R. filed an application dated 18.12.2025 for admission of additional evidence in the form of copy of License issued by the Office of the Plant Protection Officer, Shrawasti evidencing that the assessee is a licensee of seeds and pesticides business. He submitted that these documents contain some important facts relating to the

case of the assessee and prayed that the same may be admitted under Rule 29 of the I.T.A.T. Rules.

7.0 The Ld. Sr. D.R. had no objection to the admission of the additional evidences.

8.0 Having gone through the additional evidence filed before me, I am of the view that this evidence goes to the very root of the matter and is germane to proper determination/assessment in the case of the Assessee. Accordingly, I admit the same.

9.0 The Ld. A.R. further prayed that in the interest of justice, the matter may be restored back the file of the AO where the aforesaid additional evidence shall be produced to prove the transactions entered into by the Assessee during the year under consideration.

10.0 The Ld. Sr. D.R. objected to the restoration of appeal to the AO.

11.0 I have heard both the parties and have also perused the material on record. Looking into the facts of this case, I am of the considered view that the Assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, I restore this file to the Office of the AO with the direction to provide one more opportunity to the Assessee to present his case. I have already admitted the additional evidence

filed by the Assessee in the form of License issued by the Office of the Plant Protection Officer, Shrawasti, under Rule 29 of the I.T.A.T. Rules. The Assessee shall produce the same before the AO during the course of set aside proceedings. I also caution the Assessee to fully comply with the directions of the AO in the set-aside proceedings when called upon to do so, failing which, the AO would be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the Assessee.

12.0 In the result, the appeal of the Assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 31/12/2025.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:31/12/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO



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