

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH 'SMC' ALLAHABAD**

**[THROUGH VIRTUAL COURT]**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.343/ALLD/2018  
Assessment Year 2010-11**

Mir Aslam s/o Roz Miya Mohalla Court Ward No.10 At 1 <sup>st</sup> Floor of Nagar Sarkari Bank, Nichlaur, Mahrajganj (UP)	v.	The Income Tax Officer, Maharajganj, Pin 273303
TAN/PAN:BBHPA 3345P		
(Appellant)		(Respondent)

Appellant by:	Shri Mahendra Kumar Agarwal, CA
Respondent by:	Shri A.K. Singh, CIT (DR)
Date of hearing:	18.01.2021
Date of pronouncement:	19.01.2021

**ORDER**

**PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order dated 13.08.2018 of Id. CIT(A)- Gorakhpur for the AY 2015-16. The assessee has raised the following grounds:

*“1. That on the facts and in the circumstances of this case the learned CTT (Appeals) was not legally justified in confirming ex parte order passed hurriedly by ITO without proper service of notice on the appellant and the same is against Allahabad High Court decision reported in*

1980(124) ITR page 828 M/s Laxmi Industries And Cold Storage Company Pvt. Ltd. case.

2. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in confirming ex parte passed hurriedly by ITO as no notice mentioned in order as 09/06/2016, 12/03/2017, 29/03/2017, 17/05/2017. 21/07/2017 were never served /affixed/refused by appellant and otherwise report if any of process server or postman is not correct.*
3. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in confirming estimate of Rs.1258837/- alleged deposits in bank account as income when as per bank statement it is proved that cash deposits were made in bank account and was withdrawn next day or within a week and the final credit balance is Rs.939.93/- and the entire sums were withdrawn and no finding on this point has been given in appellate order.*
4. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in the case of the appellant where in appellant having business of trading of cattle fodder(bhusa) and also cane trading business and entire sale proceeds of about Rs1300000/- where in 5 percent NP rate was to be applied u/s 44AF of IT Act and no finding has been recorded in order in spite of filing of written paper book before CIT (Appeals) and also specific grounds in para 4 of Ground of Appeals filed u/s 246 before CIT (Appeals)*
5. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in confirming ex parte order when the notices have been sent with wrong address at ward no 10 instead of ward no 7 as is also proved from aadhar card.*
6. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in dismissing appeal outright on 13/08/2018 when the appeal was heard on 26/06/2018 and before him at the time of hearing of appeal it was requested before CIT (Appeals) that sir, further issue no. 1 regarding service of notice is not pressed and agreed for assessment on merit and learned CIT (Appeals) verbally assured to fix income maximum at Rs.1,65,000/- u/s 44AF of the Act but forgot the verbal assurance and illegally dismissed appeal in respect of total deposit during the year even after withdraw, as income of appellant.*
7. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in confirming charge of interest*

*u/s 234(A) of Rs 246585/- and u/s 234(C) of Rs.246585/- when the same charged of interest is not legal and is against provision of law as additions made were never anticipated.*

8. *That on the facts and in the circumstances of this case the learned CIT (Appeals) was not legally justified in confirming income of Rs.12,58,838 and at any rate the estimate of income at Rs.1258837/- confirmed by CIT (Appeals) is arbitrary and excessive.”*

2. Ground Nos. 1 and 2, regarding the validity of ex-parte order passed by the Assessing Officer without serving the notice u/s. 148 of the Act on the assessee. The ld. AR of the assessee has submitted that the Assessing Officer has issued notice u/s. 148 at wrong address of the assessee mentioning Ward No.10 as against the correct address of the assessee as Ward No.7. Therefore, the notice issued by the AO was not served upon the assessee and consequently the reassessment order passed by the Assessing Officer is invalid and liable to be quashed. He has referred to the Aadhar Card of the assessee giving the correct address of the assessee and submitted that when the Assessing Officer has not served the notice u/s. 148 within the period of limitation then it would vitiate the entire reassessment proceedings and therefore, the impugned order passed by the Assessing Officer is not maintainable and liable to be quashed.

3. On the other hand, ld. DR has submitted that the Assessing Officer issued notice u/s. 148 of the address of the assessee as it is stated in the bank statement of the assessee. Since, the assessee has not filed any return of income, therefore, the address available with the Assessing Officer as given in the bank account of the assessee cannot be said to be incorrect address of the assessee. Further, the assessee has not pressed this ground before the CIT(A) as stated in the impugned order and therefore, the assessee cannot allow to raise this issue after making a statement of not pressing this ground before the CIT(A).

4. Having considered the rival submissions and careful perusal of the record it is noted that the Assessing Officer has reopened the assessment by issuing the notice u/s. 148 on 29.03.2017. On the basis of information that during the year under consideration, the assessee has made cash deposits of more than ten lacs in his saving Bank account. The Assessing Officer has initiated the reassessment proceedings on the basis of the record received from the SBI, wherein the assessee is maintaining his account. It is apparent from the bank statement of the assessee that the assessee has given the address as Mohalla Court, Ward No.10, Nichlaul, Maharajganj. Further, it is pertinent to note that even the assessee in Form No.36 has given the same address as Mohalla Court, Ward No.10, Nichlaul, Maharajganj (U.P.). Therefore, the Assessing Officer has issued the notice to the assessee at the address available on record. Before, the Id. CIT(A) the assessee has made a statement that he is not pressing Ground No. 1, 2, 5 and 6 regarding valid service of notice issued u/s. 148 by the Assessing Officer. The Id. CIT(A) in Para 5 of the impugned order has recorded the relevant facts as under:

“5. Ground of appeal No.1,2,5 and 6

*Through this ground of appellant has challenged the proper service of the notice. During the course of appellate proceeding appellant submitted that the grounds regarding the service of notice was not pressed accordingly the grounds of appeal are dismissed as not pressed.”*

5. Accordingly, in the facts and circumstances, when the notice u/s. 148 of the Act was issued by the Assessing Officer at the address available with the Assessing Officer as well as the same address has given by the assessee in Form No.36 and further when the assessee has made a statement before the Id. CIT(A) not to press this issue of validity of notice, the assessee cannot be allowed to agitate this issue in the

present appeal at this stage. Hence, the Ground Nos. 1 and 2 of the assessee appeal are dismissed.

6. In the rest of the grounds, the assessee has raised only one issue regarding the addition made by the Assessing Officer on account of entire deposits made in the bank account of the assessee of Rs.12,58,837/-. The Id. AR of the assessee has submitted that the assessee is dealing in the cattle feed and fodder and therefore the deposits in the bank account of the assessee represent the sale proceeds of the cattle feed/fodder. He has further contended that since the turnover of the assessee was less than Rs.13.00 lacs therefore, as per the provisions of Section 44AF of the Act the presumptive income shall be assessed by taking N.P. at 5%. Hence, he has pleaded that applying the 5% of the said deposit the income of the assessee can be assessed at Rs.65,000/-. Further, the assessee agree for the assessment of the income at Rs.1,65,000/- u/s. 44AF of the Act.

7. On the other hand, the Id. DR has relied upon the orders of the authorities below and submitted that the assessee has not produced any documentary evidence in support of the claim that the deposits made in the bank account represent the sale proceeds of cattle feed/fodder. However, since the assessee has not appeared before the Id. CIT(A) therefore, the explanation of the assessee is required to be verified by the Assessing Officer on the basis of the supporting evidence. Thus, the Id. DR has submitted that this contention of the assessee cannot be accepted when the relevant records and facts have not been verified by the Assessing Officer for want of any appearance on behalf of the assessee.

8. Having considered the rival submissions as well as relevant material available on record it is noted that the Assessing Officer while passing the ex-parte reassessment order, made the addition of the entire deposits in the bank account of the assessee without even considering the corresponding withdrawal by the assessee. It is

apparent from the bank statement of the assessee that there are frequent deposits and withdrawal by the assessee and therefore, even, if any, addition is made on account of deposits the corresponding withdrawal which can be a source of subsequent deposits is required to be considered. Further, the assessee has also required to explain the deposits in the bank account at different places apart from parent branch where the assessee is having the saving bank account. Therefore, in the facts and circumstances and in the interest of justice, the matter is set aside to the record of the Assessing Officer to readjudicate the issue of assessment of income of assessee on account of deposit made in the bank account after considering the explanation of the assessee as well as supporting evidence if any to be filed by the assessee.

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

(Order pronounced on 19/01/2021 at Allahabad in the open Court through Video Conferencing)

Sd/-  
[VIJAY PAL RAO]  
JUDICIAL MEMBER

Dated:19/01/2021

Aks/-

Copy forwarded to:

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