

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH 'SMC' VARANASI**

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

ITA No.08/Vns/2020  
Assessment Year 2008-09

Mr. Rajesh Kumar Gupta, 1 <sup>st</sup> Floor, Awadh Apartment, Nagaria Chawraha, Thakurganj, Lucknow - 226003 PAN –AFVPG1623B	Vs.	I.T.O., Jaunpur
(Appellant)		(Respondent)

Appellant by	Shri Prasant Kumar Verma, Advocate
Respondent by	Shri A.K. Singh, Sr. D.R.
Date of hearing	21/03/2022
Date of pronouncement	22/03/2022

**ORDER**

This appeal of the assessee is directed against the order dated 28.11.2019 of Id. CIT(A)-1, Lucknow for the Assessment Year 2008-09.

The assessee has filed revised grounds of appeal as under:

- “1. Because the proceeding, initiated u/s. 148 of the Income Tax Act, and the reassessment framed thereafter resolved without jurisdiction the reassessment framed to be quashed.*
- 2. Because the notice issued u/s 148 of the Income Tax Act, and the reassessment framed thereafter all are without jurisdiction the assessment framed the same be quashed.*
- 3. Because the Id. Id. CIT(A) passed the order without given proper opportunity of being heard, that is bad in law and liable to remand back to Id. Id. CIT(A).*

4. *Because there is no reasons recorded u/s 148(ii) of the Income Tax Act, the notice issued u/s 148 is without jurisdiction bad in law and same is to be quashed.”*

2. At the time of hearing, the Id. AR of the assessee has submitted that the assessee has pressed only Ground No.3 of the revised grounds of appeal. The Id. AR has also filed an application/submission dated 21.3.2022 and explained that the assessee was in dire need of money and to take the credit from the bank the assessee has made various deposited in his bank account after withdrawing the same through his friends and relatives. Therefore, there are repeated transactions of deposits and withdrawal in identical manner just to so the enhanced turnover of the assessee who was facing financial crises and therefore wanted to avail the credit from the bank. In this process, the assessee has made various transactions by using the same money of about Rs.1.25 lakhs. The Assessing Officer has made an addition of the entire deposits made during the year without considering the fact that there are contra entries of deposit and withdrawal and the assessee has used the withdrawal money for subsequent deposit in the bank account. On appeal, the assessee has explained the source of these deposits as to how the assessee has made this multiple deposits in the bank account by using the same money. However, the Id. Id. CIT(A) has confirmed the addition made by the Assessing Officer. Thus, Id. AR has submitted that due to financial crises the assessee could not take good legal advice and consequently he could not present its case properly before the Id. CIT(A). He has prayed that the matter may be remanded to the record

of the Id. CIT(A) proper verification of the fact about the source of the money deposited in the bank.

3. On the other hand, Id. DR has submitted that the assessee has never filed the return of income and therefore the Assessing Officer has issued notices u/s. 148 of the Act on the basis of the AIR of deposits of Rs.26,97,050/- made by the assessee during the year in the ICICI Bank account. The said notice was issued after four years from the assessment year however, the assessee did not file any return of income in response to the notice issued u/s. 148 of the Act. In those circumstances, the Assessing Officer has passed the best judgment assessment as per the information available with the Assessing Officer. The Id. CIT(A) has considered the explanation of the assessee and noted that the withdrawal as claimed by the assessee is made by some third party and not by the assessee therefore, the same cannot be considered as source of the subsequent deposit. The Id. CIT(A) has called for remand report from the Assessing Officer and after verification of the fact that the withdrawals were made by different person not by the assessee, the explanation of the assessee was not found to be tenable. He has relied upon the orders of the authorities below.

4. I have considered the rival submissions as well as the relevant material available on records. The Assessing Officer issued notice u/s 148 on the basis of AIR information for the deposit of Rs.26,97,050/- in the bank account of the assessee. Since the assessee did not respond to the notices issued by the Assessing Officer therefore the Assessing Officer assessed the total deposit as income of the assessee. Before the Id. Id. CIT(A), the assessee explained that he

wanted to take loan from the bank and to develop his business. Since the assessee was not having good turnover on record therefore it was not possible to take the financial help from the bank. The assessee further explained that the assessee has used own money as well as relative money total amounting to Rs.1,25,000/- by depositing in the bank in small amount in parts and withdraw the same through relatives and again deposited in the bank account. This process was repeated many times during the year to reach the target of turnover. Thus the assessee explained before the Id. Id. CIT(A) that the assessee's owned money was circulated in the deposit and withdrawal with the help of his relative to show the enhanced turnover for the purpose of taking the credit facility from the bank and therefore the deposit cannot be assessed as income of the assessee. The Id. Id. CIT(A) after calling for a remand report from the Assessing Officer has confirmed been the addition on the ground that the withdrawal was made by the third person not by the assessee and the assessee has failed to explain how these three persons with whom the assessee has shown the transactions of transfer of money through cheques was received back by the assessee for the subsequent deposit.

5. After going through the entries in the bank account of the assessee, it is apparent that the repeated transactions of identical amount of deposit and withdrawal in the name of three persons namely Shri Amit Gupta, Shri Anil Gupta and Mahendra Kumar Goyal were made. There are contra entries of identical amounts of deposit and withdrawal on the same date which shows that whatever cash deposited by the assessee in the bank account, the same was also withdrawn by these three persons. The amount of deposit and

withdrawal are in the range of Rs.10,000 to 30,000 except in few instances where the amount of Rs.60,000/- to 1,00,000/- were deposited and withdrawn in transaction but on the same date. Therefore even if the deposits made by the assessee is not out of withdrawals as claimed by the assessee the entire deposit amount cannot be treated as income of the assessee as the assessee has shown on the record that this was turnover of the assessee to obtain loan from Bank. Hence the addition of the deposit could be made after considering these amounts of deposit as turnover of the assessee if not from the prior withdrawal made by the assessee through these three persons. Accordingly, in the facts and circumstances of the case and in the interest of justice, the matter is set aside to the record of the Id. Id. CIT(A) for deciding the same afresh after conducting a proper enquiry through Assessing Officer in the remand proceedings about the nature of the deposits and withdrawal and to examine these three persons to ascertain the real nature of the transaction as appearing in the bank account of the assessee. Needless to say, the assessee has given proper opportunity of hearing before passing the fresh order.

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

(Order pronounced in the open court on 22/03/2022)

**Sd/-**  
**(Vijay Pal Rao)**  
**Judicial Member**

Aks -  
Dtd. 22/03/2022

*Copy of order forwarded to:*

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|--|---------------------------|
| <i>(1) The appellant</i>               | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i>                | <i>(4) CIT(A)</i>         |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i>     |