

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

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.141/Lkw/2021
Assessment year: 2017-18

Kailash Nath Gupta, Main Road, Distt. Lakhimpur Kheri PAN: ABKPG 5939K	Vs.	Income Tax Officer, Ward 3(4), Lakhimpur Kheri
(Appellant)		(Respondent)

Appellant by	Shri Shubham Rastogi, CA
Respondent by	Shri Harish Gidwani, DR
Date of hearing	27/07/2022
Date of pronouncement	10/08/2022

ORDER

PER T.S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A) dated 29/10/2021. In this appeal, the assessee has taken the following grounds:

- "1. The humble appellant had well explained the availability of Fund (old SBN's) with supporting Cash Flow Fund statement which had not been disputed by the Courts below.*
- 2. The Government had allowed the time to deposit in old Currency in Bank upto December, 2016 and the appellant had deposited the same within the time allowed as per chart given below para 2 of the order of the learned Assessing Officer.*
- 3. That the main objection of the learned Assessing Officer was as to why the entire deposits were not made on a*

single day whereas there was no such binding of the appellant.

4. *That the learned C.I.T. (Appeals) too confirmed the addition without properly considering the facts in a judicious way which is quite illegal."*

2. At the outset, Id. AR submitted that there is a delay of one day in filing the appeal, which may have happened due to postal delay therefore the same may kindly be condoned.

3. Finding the reasons for delay in filing the appeal of one day delay was condoned and Id. AR was asked to proceed with his argument.

4. The Id. AR submitted that the assessment of the assessee was completed u/s. 143(3) of the Act and wherein an addition of Rs.2,12,500/- was made u/s. 69A for unexplained deposits in the bank account. It was submitted that total deposits of Rs.7,62,500/- was made, out of which, Rs.5,50,000/- were accepted by the Assessing Officer and addition to the extent of Rs.2,12,500/- was made. It was submitted that the Id. CIT(A) also confirmed the addition by dismissing the appeal of the assessee. It was submitted that the proper documents for availability of the cash were submitted to the Assessing Officer which included the receipt of rent and in this respect my attention was invited to PB pgs.24 and 25, where a copy of agreement was placed. It was further submitted that the assessee being a senior citizen, the CBDT Instruction No.3/2017 will be applicable wherein, it has been stated that for senior citizen cash available up to Rs.5.00 lacs has to be accepted per person. In view of above, it was submitted that the appeal filed by the assessee may be allowed.

5. The Id. DR, on the other hand, relied on the orders of the authorities below.

6. I have heard the rival parties and have perused the material placed on record. I find that the Id. CIT(A) has passed the order on the assessee

Shri Kailash Nath Gupta whereas Form-36 filed before Tribunal has been signed by Shri Sujeet Kumar Gupta son of Shri Kailash Nath Gupta. From the order of Id. CIT(A), I find that assessee had died during the proceedings before Id. CIT(A), which fact is verifiable from pg. 9 of CIT(A)'s order. Therefore, Id. CIT(A) was in the knowledge of the fact that assessee was no more and therefore he should have taken on record the legal heir of the assessee and should have passed order on such legal heir whereas he has passed the order on a dead person which is not permissible. Therefore, I deem it appropriate to remit the issue back to Id. CIT(A) who should pass a fresh order after taking into account the legal heir of the assessee.

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

(Order pronounced in the open court on 10/08/2022)

Sd/-
(T.S. Kapoor)
Accountant Member

Dated: 10/08/2022

Aks/-

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar