

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

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No. 131/Lkw/2022
Assessment Year 2011-12

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| Ravindra Kumar, Mohammadpur, Bilwaran Sandila, Hardoi-241204 PAN – ALRPK 2395J | Vs. | Income Tax Officer, Ward-3(3), Hardoi - 241001 |
| (Appellant) | | (Respondent) |

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|-----------------------|----------------------------|
| Appellant by | Shri Rakesh Garg, Advocate |
| Respondent by | Shri Harish Gidwani, DR |
| Date of hearing | 04/08/2022 |
| Date of pronouncement | 17/08/2022 |

ORDER

This is an appeal filed by the assessee against the order of Id. CIT(A) dated 21.12.2021.

2. The Id. AR, at the outset, invited my attention to the fact that there is a delay of 95 days in filing the appeal which happened due to the fact that the appeal was inadvertently filed with the office of DR-ITAT on 18.01.2022, which was well within the prescribed period and when the fact of having filed the appeal before DR-ITAT came to the notice of assessee, the assessee made a request to DR, ITAT Lucknow kindly forward the appeal papers to the Office of Registrar ITAT and which the DR, ITAT transferred on 25.5.2022 itself. Therefore, it was prayed that the delay has happened due to a mistake which is purely on account of ignorance and unawareness of the assessee therefore it was prayed that the delay may be condoned and appeal be heard on merits.

3. The Id. AR invited my attention to affidavit as sworn in and signed by the assessee placed in the file.

4. The Id. DR did not have any objection to the condonation of delay therefore the delay was condoned and Id. AR was directed to proceed with his argument.

5. The Id. AR submitted that the Assessing Officer had made addition of Rs.24,30,000/- on account of deposits in his bank account. It was submitted that the said deposits were made by the assessee out of agricultural income. Moreover, it was submitted that the Assessing Officer has considered only the deposits in the bank account and has not considered the withdrawals made from the same account. The Id. AR submitted that Id. CIT(A) did not consider the submissions of the assessee that the assessee was a agriculturalists and the bank account shows the withdrawals and deposits both. It was submitted that Id. CIT(A) has held that before Assessing Officer no document was filed except copy of bank account and he cannot accept any further documents in violation of Rule 46A(1) of Income Tax Rules 1962 and therefore he has dismissed the appeal. The Id. AR argued that the assessee is an old person of 78 years age and the deposits in the bank account are duly explained by the withdrawals in the same bank account and moreover the assessee had deposited the cash out of sale proceeds of agricultural produce, the evidence of which was placed in the paper book and therefore it was prayed that the appeal filed by the assessee may be allowed.

6. The Id. DR on the other hand, submitted that before the Assessing Officer no submissions were made and there was no occasion for filing the additional documents before Id. CIT(A) therefore Id. CIT(A) has rightly dismissed the appeal of the assessee.

7. I have heard the rival parties and have gone through the material placed on record. I find that the bank statements filed by the assessee before

authorities below are placed in PB pgs. 102 to 106. The entries in the bank account are both of withdrawals and deposits. At pages 7 to 15 are Khasra and Khatuni of land belonging to assessee and his wife. Paper Book pgs. 110 to 130, is a copy of certificate from gram pradhan supporting agricultural holding of the assessee. From the assessment order and from the order of Id. CIT(A) it emerges that these documents other than bank statement were not available with the Assessing Officer. The Id. CIT(A) did not accept these documents treating them to be additional evidences. Though Assessing Officer has made the additions of cash deposits in the bank account, however, he has overlooked the fact that from the same bank account the assessee had withdrawn substantial amounts on various dates. Moreover, the evidences filed before Id. CIT(A) regarding evidence of agricultural income also proves that assessee had earned agricultural income therefore in view of these facts and circumstances, I deem it appropriate to remit the matter back to the Assessing Officer who should consider the evidences filed before Id. CIT(A) for deciding as to whether cash deposits represented any escaped income or is a part of agricultural income or a part of withdrawals from the bank.

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

(Order pronounced in the open court on 17/08/2022)

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

Aks -

Dtd. 17/08/2022

Copy of order forwarded to:

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| (1) The appellant | (2) The respondent |
| (3) Commissioner | (4) CIT(A) |
| (5) Departmental Representative | (6) Guard File |

Assistant Registrar