

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

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.18/VNS/2020
Assessment Year: 2010-11**

Shri Radhey Shyam Jaiswal, New Road, Nizamabad, Azamgarh, U.P. PAN-AEWPJ7199H	v.	Income Tax Officer, Ward-3(2), Azamgarh
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	23.08.2022
Date of pronouncement:	25.08.2022

ORDER

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 22.10.2019 of CIT(A) for the assessment year 2010-11. The assessee has raised the following grounds of appeal:-

"1. That in any view of the matter the assessment order dated 20.11.2017 passed u/s 148/143(3) of the IT Act in arbitrary manner and his actions as confirmed by the Commissioner of Income Tax (Appeal) vide his order dated 22.10.2019 ignoring the correct facts of the case and cited case laws are bad both on the facts and in law.

2. That in any view of the matter the notice dated 31.03.2017 u/s 148 of the IT Act issued on last date of limitation but not served on the appellant and even entire procedure as adopted for framing the assessment was not correct and even reasons recorded were not provided hence the notice u/s 148 of the IT Act dated 31.03.2017 is liable to be declared invalid.

3. That in any view of the matter the addition of Rs. 14,61,755/- u/s 69 of the IT Act as made by the assessing officer by considering credit side entries of bank account of the appellant ignoring correct facts and his action as confirmed by the learned Commissioner of Income Tax (Appeal) without appreciating the correct facts and cited case laws are highly unjustified and illegal, hence the addition is liable to be deleted in the facts and circumstances of the case.

4. *That in any view of the matter since the deposits in bank from definite sources and full facts regarding source were duly explained with supporting documents hence the addition of Rs. 14,61,755/- on count of bank deposits so made and confirmed by the two lower authorities is highly unjustified and illegal and hence the same is liable to be deleted.*

5. *That in any view of the matter the observations and findings of the 271(1)(c) lower authorities in their order for making and maintaining a part of the addition without appreciating the correct facts is unjustified illegal and contrary to the actual facts of the case hence the addition is liable to be deleted.*

6. *That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.*

7. *That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal."*

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that the assessee has been seeking adjournment of hearing of the appeal right from the beginning.

3. On the last six occasions, the hearing of the appeal was adjourned on the written request of the assessee. It is also evident from the record that none has appeared on behalf of the assessee on any of the occasions when this appeal was listed for hearing. Therefore, in the facts and circumstances of the case, the Tribunal proposes to hear and dispose of this appeal *ex parte*.

4. The solitary issued in this appeal of the assessee is regarding the addition made by the Assessing Officer on account of cash deposit of Rs. 23,88,300/-. The assessee is an individual and has not filed any return of income under section 139 of the Act. The Assessing Officer received the information about the cash deposit of Rs. 23,88,300/- in the bank account of the assessee. The Assessing Officer issued a letter dated 7.3.2017 under section 133(6) of the Act to the assessee, however, there was no response from the assessee. Thereafter, the Assessing Officer issued notice under section 148 on 31st March, 2017 to assess the escaped

income on account of deposit made in the bank account of the assessee. In response to the notice, the assessee filed return of income on 17.9.2017 declaring total income of Rs. 1,55,884/- which was subsequently revised on 9.11.2017 declaring total income of Rs. 1,68,630/-. The Assessing Officer verified the bank account statement and found that a sum of Rs. 14,61,755/- was deposited by the assessee in the SBI account for which the assessee has not explained the source. Accordingly, the Assessing Officer made an addition of Rs. 14,61,755/- under section 69 of the Act. The assessee challenged the action of the Assessing Officer before the CIT(A) but could not succeed.

5. I have considered the contention of the assessee before the authorities below as well as the submissions of the learned DR who has contended that the assessee has not explained the source of deposit of Rs. 14,61,755/- to the satisfaction of the Assessing Officer. He has relied upon the orders of the authorities below.

6. At the outset, it is noted that the CIT(A) has recorded the facts and contention of the assessee wherein the assessee has claimed that the sale proceeds as well as withdrawal from the bank account to the tune of Rs. 6,22,000/- are the source of making the deposit in the bank account. The said explanation of the assessee was not accepted by the CIT(A) in para 5 as under:-

“5. In this case proceeding u/s 148 were initiated on the basis of information that the appellant had deposited cash of Rs. 23,88,300/-. In response to notice u/s 148 the appellant filed an ITR in which it disclosed gross receipt of Rs. 1955820/- u/s 44AF of the Act and disclosed net profit of Rs. 166740/-. The appellant also submitted bank statement of account no. 111072010008402 pertaining to Ws Kashi Gomti Sayukt Gramin Bank. However, the AO made enquires and it was revealed that the appellant was also maintaining a bank account with SBI Nizamabad in which he had deposited Rs. 1461749/-. When confronted the appellant submitted a revised ITR in which gross receipt were disclosed at Rs. 2810500/- and total income at Rs. 168630/- under the head business and profession. The appellant subsequently submitted that Rs. 274632/- worth of turnover was left to be added and the total turnover may be taken at Rs. 3085132/-

. The AO held that the deposits made in the SBI were not disclosed by the appellant and the same was disclosed only after, the information was shared with him. Accordingly, the AO added Rs. 1461755/- to the income of the appellant u/s 69 of the Act. During the course of appellate proceedings it was submitted that the appellant is an old assessee engaged in trading of Iron and has never maintained any books of account and has always disclosed his income u/s 44AD of the Act. With regards to the deposit made in the State Bank of India. It was submitted that it pertains to the turnover of the appellant. Further it was submitted that the Rs. 6,22,000/- were used to deposited in the bank account from the withdrawal made in the same account. Copy of bank statement alongwith a statement of cash deposits and withdrawal made from the account was submitted in support of the contention. A perusal of the assessment order and the submissions made by the appellant shows that the bank account maintained with the SBI, Nizamabad was not disclosed by the appellant while he filed return of income in compliance to notice u/s 148 of the Act. The deposits made in the bank account were included in the gross receipts only after the bank account and its details, were confronted to the appellant. Thus, it is clear that the appellant had never disclosed the contents of the bank account on his own accord. The claim of the appellant that he has always file the return of income u/s 44AD of the Act does not in any way comes to rescue of the appellant. It rather places additional responsibility on the appellant to correctly estimate the turnover for the year under consideration in which the said returns were filed. The Determination of income u/s 44AD of the Act is totally dependent upon the disclosure of the turnover by an assessee. This measure has been brought into the act with a view to facilitate the small traders in filing the ITR. The appellant in this case has tried to conceal the deposits made in the SBI, Nizamabad branch. The appellant has contended that these deposits pertains to the turnover of the business and the same have been used for the purpose of the business. A perusal of the bank statement shows that majority of the withdrawals have been made in cash and only some of the withdrawals have been effected to transfers. Furthermore, the identity of the persons who have received the said transfer is also unsubstantiated. The withdrawal of amount in cash does not in any way prove that the sale has been used for the purpose of the business. Even the deposits made in the bank account are made in for of distant places. Thus, the claim of the appellant that the deposits and withdrawal made in the bank account pertains to the business of the business has remained unsubstantiated. The appellant has claimed that Rs. 6,22,000/- were withdrawn on different date and the same were used for making further deposits has not been support by any cogent evidence. The appellant has not submitted any reason what so ever for withdrawing the amount and re -depositing it in the same bank account. In view of the above I find that the appellant has failed to substantiate the source of the cash deposited in the bank account, accordingly-the addition made by the AO is upheld and the grounds of appeal are rejected.”

7. It is pertinent to note that the assessee has declared a turnover of Rs. 19,55,520/- on which the income was declared under section 44AF. The Assessing Officer has not disturbed the business income of the assessee declared in the return of income but made the addition only on account of deposits in the bank account of the assessee. Neither the Assessing Officer nor the CIT(A) has properly verified the nature of transactions of deposit made in the bank account whether it is one time deposit or these were regular transactions throughout the year so as to consider the possibility of turnover of the assessee being deposited in the bank account. However, the assessee also claimed the source of deposit as withdrawal made from the bank account to the tune of Rs. 6,22,000/- which can be considered by verifying the sequence of withdrawal and deposits as to whether any co-relation between the withdrawal and deposit is made out or not. Accordingly, in the facts and circumstances of the case, when the Assessing Officer has not given the finding based on the analysis of the deposits transactions in the bank account and co-relation between the withdrawal and deposits as well as the turnover of the assessee to be considered as source of deposit the matter is set aside to the record of the Assessing Officer for proper verification and fresh adjudication. Needless to say the assessee be given an appropriate opportunity of hearing before passing the fresh order.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 25.08.2022 at Varanasi, U.P.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 25/08/2022
Varanasi
Sh

Copy forwarded to:

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

By order
Sr. P.S.

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	23.08.2022		Sr. PS/PS
2.	Draft placed before author:	24.08.2022		Sr. PS/PS
3.	Draft proposed & placed before the second member:	-		JM/AM
4.	Draft discussed/approved by Second Member:	-		JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:	.08.2022		
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			
11.	Date of uploading	.08.2022		