

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

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.27/VNS/2018
Assessment Year: 2011-12**

Smt. Geeta Devi w/o Shri Suresh Chand Purani Bazar, Shahganj, Jaunpur-223101, U.P. PAN-BSWPD6204L	v.	Income Tax Officer-I, Jaunpur, U.P.
(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 30.03.2018 of CIT(A) for the assessment year 2008-09. The assessee has raised the following grounds of appeal:-

"1. Because the assessment order dated 28.01.2015 passed by assessing authority as well as Appellate order dated 30.03.2018 by Commissioner of Appeals-I, Lucknow suffers from material irregularity of law as well as of facts and is against the principle of natural justice.

2. Because there was no reason to believe that the appellant had escaped income and no lawful reason in making impugned addition of Rs. 6,75,000/- under Section 69A of Income Tax Act 1961, when there is valid and lawful reason/explanation offered by the appellant along with evidences about the nature and acquisition of the cash deposit.

3. Because the court below fail to appreciate judicially that assessing authority without providing sufficient opportunity and without application of judicial mind made an addition of Rs. 6,75,000/- out of the cash deposit of Rs. 10,00,000/-, merely because the husband of the appellant Shri Suresh Chandra has clarified and accepted through duly sworn affidavit that out of the cash deposit of Rs. 10,00,000/-, Rs. 6,75,000/- belongs to appellant and rest belong to him.

4. Because the court below fail to adjudicate judicially despite the fact that the assessment order has been passed without providing sufficient opportunity to explain the cash deposit on the basis of evidence available on record in earlier assessment year 2010-11, assessment proceeding of which are going simultaneously before the same assessing authority and the appellant came to know only upon receiving the assessment order that the vital evidences available and filed during the simultaneous assessment proceedings for A.Y. 2010-11 has not been taken into consideration.

5. Because the court below fail to adjudicate within the four corners of law that appellant has invoked the provisions of Rule 46A of Income Tax Rules, 1962 before the court below as the appellant had been prevented by sufficient cause in producing the evidence available in A.Y. 2010-11 for which proceedings u/s 148 of I.T. Act 1961 had been initiated simultaneously along with A.Y. 2011-12, under bonafide belief that being proceedings for both the A.Y. 2010-11 and A.Y. 2011-12 are going on simultaneously before the same assessing authority hence the evidence available in A.Y. 2010-11 should be considered judicially.

6. Without prejudice to above-Because evidences are vital documents which are required to be considered in order to adjudicate the issue in a judicious manner. The principle "Audi alteram partem", i.e. no man should be condemned unheard is the basic canon principles of natural justice and accordingly Rule 46A of the Income Tax Rules cannot be override the principles of natural justice.

7. Because the court below should have considered the vital evidences which are filed during the course of appellate proceedings and Rs. 6,75,000/- which were already in record but the court below fail to appreciate that the assessing authority did not considered the documentary evidence available on record for the earlier assessment 2010-11 for which assessment proceedings were going on simultaneously before the same assessing authority and the Rule 46A has not been invoked just to produce any additional evidence.

8. Because the court below without judicial application of mind, mere on the basis of remand report, confirmed the impugned addition of Rs. 6,75,000/- and did not consider the evidence produced which were already on record under simultaneous assessment proceedings for earlier assessment year 2010-11 before the same assessing authority.

9. Because the court below as well as assessing authority fail to discharge discretion conferred under section 69A of the Income Tax Act, 1961 in view of the law declared by Hon'ble Apex Court in the case of C.I.T. vs. P.K. Noorjahan 237 ITR 570 (SC)."

2. None has appeared on behalf of the assessee despite various opportunities were granted on the earlier occasions. It transpires from the record that the assessee is seeking adjournment of hearing of the appeal on the ground of either illness of the assessee or illness of her authorized representative.

3. On the last two occasions, a similar prayer was made for adjournment of the hearing and the hearing was finally adjourned to 22.08.2022. The assessee again filed an application for adjournment of hearing citing the reason of illness / fever upon which another opportunity was granted to the assessee to appear and argue the case on 23.08.2022 however, nobody has appeared when this appeal was called for hearing. Accordingly, the Bench proposes to hear and dispose of this appeal *ex parte*.

4. The assessee is an individual and claimed to have derive income from trading of Fruits and Vegetables. The assessee did not file any return of income under section 139(1) of the Act. The Assessing Officer received information from the office of I&CI regarding a sum of Rs. 10,65,100/- deposited in the bank account of the assessee. Accordingly, the Assessing Officer issued notice under section 148 on 26.03.2013. In response to the notice under section 148, the assessee filed a return of income on 8th July, 2013 declaring total income of Rs. 1,62,507/-. The Assessing Officer issued notice under section 142(1) alongwith the questionnaire on 28.10.2014. In response to the said notice, the assessee filed a joint affidavit with her husband Sh. Suresh Chand and stated that out of the total deposit of Rs. 10,65,100/-, a sum of Rs. 6,75,000/- was deposited by the assessee herself and balance Rs. 3,25,000/- deposited by her husband. The Assessing Officer analyzed the profit & loss account and balance-sheet filed by the assessee as well as the bank account statements and noted that from 5th April, 2010 to 29.03.2011, the assessee has deposited Rs. 1,000/- to 10,000/- whereas Rs. 10,00,000/- was deposited on 29.11.2010 for which the assessee has not

satisfactory explained the source. The Assessing Officer accepted the claim of Rs. 3,25,000/- deposited by her husband and made the addition of the balance amount of Rs. 6,75,000/-. The assessee challenged the action of the Assessing Officer before the CIT(A) but could not succeed.

5. As per the statement of facts, the assessee has contended that the addition was made by the Assessing Officer without application of mind. The assessee has reiterated in the statement of facts that the order was passed by the Assessing Officer without providing the sufficient opportunity to explain cash deposit. The entire contention before the CIT(A) was regarding the non providing of opportunity to explain the source of deposit.

6. On the other hand, learned DR has submitted that the CIT(A) called for a remand report and therefore, the assessee was granted further opportunity to explain the source of deposit made in the bank account. Despite opportunity granted to the assessee in the remand proceedings, the assessee failed to explain the source of deposit. He has further contended that the Assessing Officer has duly analyze the transactions of the assessee whereas the other deposits made in the bank account of the assessee which are in the range of Rs. 1,000/- to 10,000/- from April, 2010 to March, 2011 and lump sum amount of Rs. 10,00,000/- was deposited on a single day on 29.11.2010. The Assessing Officer has made the addition in respect of the deposit made on 29.11.2010 to the extent of Rs. 6,75,000/- which was claimed by the assessee as deposited by her. He has relied upon the orders of the authorities below.

7. I have considered the rival submissions and carefully perused the impugned orders of the authorities below. The Assessing Officer has recorded in para 3 the facts and averments made in the affidavit as under:-

“3. On perusal of his bank statement, it is found that from 05/04/2010 to 29/03/2011, Rs. 1,000/- to Rs. 10,000/- has been deposited except Rs. 10,00,000/- deposited on 29/11/2010. On the other hand, her withdrawal is Rs. 500/- to Rs. 12,000/-. On 23/01/2015 the assessee has filed a joint affidavit with her husband Sri Suresh Chand, as per affidavit, Rs. 6,75,000/- was deposited by her and balance Rs. 3,25,000/- deposited by her husband.”

8. Once the claim of the assessee was accepted by the Assessing Officer regarding the amount of Rs. 3,25,000/- deposited by her husband, then it cannot be said that the Assessing Officer has passed the impugned order without application of mind. The CIT(A) called for a remand report and after considering the remand report has passed the impugned order therefore, the grievance of the assessee against the Assessing Officer for non providing sufficient opportunity was also addressed by the CIT(A) by calling from him a remand report. It is manifest from the order of the CIT(A) that even during the remand proceedings, the assessee has not explained the source of deposit of Rs. 6,75,000/- except the fact that for the assessment year 2010-11, the Assessing Officer also initiated proceedings under section 147 and the assessee filed her return of income declaring the income of Rs. 1,50,910/-. It is pertinent to note that the deposit of Rs. 10,00,000/- was made by the assessee on 29.11.2010 out of which Rs. 6,75,000/- was claimed by the assessee as deposited by herself and balance was by her husband. Therefore, the assessee was under obligation to explain the source of said deposit at Rs. 6,75,000/- alongwith the supporting evidence. It is manifest from the facts as recorded in the impugned orders that except the income declared by the assessee for the assessment year 2010-11 and for the year under consideration, there was no other source explained by the assessee for the said deposit. Accordingly, in the facts and circumstances of the case after considering a reasonable amount of drawings for household expenses a sum of Rs. 2,00,000/- is considered as a source from the income of A.Ys. 2010-11 and

2011-12 and accordingly, the addition made by the Assessing Officer of Rs. 6,75,000/- is restricted to Rs. 4,75,000/-.

9. In the result, the appeal of the assessee is partly allowed.

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		