

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

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.136/Lkw/2021
Assessment year:2017-28

Shri Jag Mohan, 22, Gauri Abhaypur, Shivrajpur, Kanpur. PAN:CLYPM3914L	Vs.	Income Tax Officer-1(3)(5), Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri Sudhir Kumar Tiwari, Advocate
Respondent by	Shri Harish Gidwani, D. R.
Date of hearing	10/08/2022
Date of pronouncement	29/08/2022

ORDER

This is an appeal filed by the assessee against the order of learned CIT(A) dated 01/11/2021. In this appeal the assessee has raised the following grounds:

- "1. *BECAUSE, the AO has not followed the analysis of the procedure of "Best Judgment Assessment" in framing the assessment ex-parte u/s 144 of the Act, the CIT(A)/NFAC upheld the same, which is bad in law and contrary to the provisions of law be quashed.*
2. *BECAUSE, the CIT(A) as well as AO has failed to appreciate that the entire transaction in impugned bank account relates to business receipt, received from debtors as well as amounts are lying since long in account of farmers, there is no undisclosed income and as such the assessment framed is contrary to facts, bad in law be quashed.*
3. *BECAUSE, the CIT(A)/NFAC has erred on facts and in law in upholding a sum of Rs.13,59,238/- as unexplained money*

under section 69A read with section 115BBE, in as much as, the provisions of section 69A are not applicable for the reason that the money deposited in the bank is neither unexplained, nor undisclosed, the addition made be related.

4. *BECAUSE, the CIT(A) has uphold the net profit rate of 8% on total deposits made in the bank treating it to be business income without appreciating the facts, the income estimated and addition of Rs.7,84,255/- made here is contrary to facts, bad in law be deleted.*
5. *BECAUSE, addition of Rs.7,84,255/- has been made purely on presumptions and surmises basis without any evidence brought on records, is bad in law bee deleted."*

2. Learned counsel for the assessee, explaining the facts of the case, submitted that assessee had not filed his return of income and Assessing Officer, on the basis of bank deposits made by assessee, required the assessee to explain the source of deposits of cash particularly during demonetization period starting from 09/11/2016 to 31/12/2016. The Assessing Officer observed that the assessee had deposited cash amounting to Rs.13,28,000/- during the year. In response to the query made by the Assessing Officer, the assessee submitted that he was carrying on the retail and wholesale business of fertilizer and seeds which he is carrying on in rural area and sales were being made directly to farmers which is generally in cash which is deposited in bank and the amount is transferred to fertilizer and seed supplier companies against the purchase orders. The Assessing Officer, after noting down the quarter-wise deposits in the bank account and after comparing the deposits with the VAT return, arrived at the conclusion that the total deposits in the bank account of the assessee, during the year, were Rs.1,11,62,424/- whereas the total sales, declared by the assessee in the VAT return, amounted to Rs.98,03,196/-. Therefore, he held the excess amount of Rs.13,59,238/- as unexplained deposits and made addition u/s 69A of the Act. The Assessing Officer further determined the net income of

the assessee @8% on turnover of Rs.98,03,196/- and thus total addition of Rs.21,43,493/- was made. The above assessment order was passed u/s 144 of the Act. Aggrieved with the order of the Assessing Officer, the assessee filed appeal before learned CIT(A), who dismissed the appeal of the assessee by holding that the Assessing Officer had rightly applied the provisions of section 44AD of the Act by applying 8% net profit to the turnover and similarly, the addition u/s 69A was also upheld. Aggrieved with the order of learned CIT(A), the assessee filed appeal before this Tribunal. Learned counsel for the assessee submitted that both the additions are against the facts of the case and submitted that since the fact of having carrying out the business was established by the authorities below, on the basis of filing of VAT returns, the addition u/s 69A of the Act of an amount of Rs.13,59,238/- is not justified as the deposits were not unexplained and these were duly disclosed in the books of account and it was submitted that in a business an assessee not only receives payments against sales but also receives payments from old debtors and from friends & relatives as loans and advances. It was submitted that the assessee had also received Rs.6,00,000/- as repayment of loan given in earlier year and similarly, Rs.6,34,238/- was received by the assessee as advance from customers. Learned counsel for the assessee in this respect invited my attention to the audited balance sheet, placed at page 54 of the paper book, where the said amount was reflected as advance from customers. Therefore, it was argued that the addition u/s 69A is not justified. Arguing on second ground of appeal, Learned counsel for the assessee submitted that the authorities below have estimated the net income of the assessee after applying the provisions of section 44AD and have estimated the income @8% whereas as per the audited balance sheet and profit & loss account, net income of the assessee is much below 8% and it was submitted that if the Assessing Officer was to complete assessment u/s 144

of the Act, he should have completed the same by following the well laid down law of making assessments u/s 144 of the Act. Therefore, it was prayed that the addition sustained by learned CIT(A) be deleted.

3. Learned D. R., on the other hand, submitted that the assessee did not file any return of income and Assessing Officer, on the basis of abnormal deposits in the bank account, issued notice to the assessee u/s 142(1) and assessee, during assessment proceedings, accepted that he was engaged in the business of fertilizer and seeds but did not produce any books of account or other documents and the Assessing Officer, on the basis of VAT returns filed by the assessee, arrived at the amount of sales and applied a net profit rate of 8% to such amount of sales. It was submitted that on the difference between the amount of sale and deposits in the bank account, the Assessing Officer and learned CIT(A) have rightly held that such deposits were unexplained and therefore, have rightly made the addition u/s 69A of the Act and therefore, it was prayed that the appeal of the assessee may be dismissed.

4. I have heard the rival parties and have gone through the material placed on record. I find that this is an undisputed fact that the assessee did not file any return of income and in view of the notice of the Assessing Officer, the assessee submitted that he was engaged in the business of fertilizer and seeds but did not produce any books of account or any other document therefore, the Assessing Officer completed the assessment u/s 144 of the Act on the basis of turnover arrived at by summing up the turnover declared in the VAT return. Since the assessee did not produce any books of account, the Assessing Officer estimated the net income of the assessee and applied 8% net profit rate and made addition of Rs.7,84,255/-. As regards the difference between the turnover and deposits in the bank, the Assessing Officer held the difference to be on account of unexplained

deposits and applied the provisions of section 69A and made an addition of Rs.13,59,238/-. I find that assessee has filed copy of the balance sheet placed at pages 39 to 59 of the paper book wherein the date of audit has been mentioned as 09/06/2022 whereas the assessment and proceedings before learned CIT(A) were already concluded as the order of learned CIT(A) is dated 01/11/2021. Learned counsel for the assessee, in the paper book, has certified that these documents were available with the authorities below therefore, the certification on the paper book is wrong and false. Therefore, the copy of audit report and balance sheet cannot be accepted for arriving at the conclusion on the issues before me. Before the Assessing Officer the assessee did not file any documents therefore, the Assessing Officer had no option but to compute the income of the assessee on the basis of best judgment assessment and he arrived at the turnover of the assessee on the basis of VAT returns and calculated the income by applying provisions of section 44AD of the Act. Before me the assessee has filed copy of audited balance sheet and profit & loss account along with copy of audit reports which are additional documents. These documents were not filed by the assessee before the authorities below and moreover the grievance of assessee is that application of 8% net profit is quite excessive in view of the nature of trade of assessee where the percentage of profits is quite low. In my opinion, the Assessing Officer should have considered the net profit ratio of similar business into same area by different assessees and should also have considered the profit ratio carried by assessee in earlier & succeeding years to arrive at the fair estimate of business income of the assessee.

4.1 Besides the estimation of income @8%, the Assessing Officer has also made an addition of Rs.13,59,238/- being the difference between the amount of turnover and deposits in bank. The said addition has been made u/s 69A of the Act. Learned counsel for the assessee has relied on certain

case laws for the proposition that such deposits, made in the bank account and recorded in the books of account, cannot be said to be unexplained deposit u/s 69A of the Act. Before me, Learned counsel for the assessee has argued that out of Rs.13,59,238/-, Rs.6,00,000/- was received back as advance given in previous year and Rs.6,34,328/- was due to amount received from various customers and Rs.1,25,000/- represented the deposits made out of old savings of his wife. These submissions were not made before the authorities below but since the assessment of the assessee was completed u/s 144 of the Act, these facts have also not been examined by the Assessing Officer. Since it has been established from the VAT returns that the assessee was engaged in the business of fertilizer and seeds therefore, there is every possibility of certain loans & advances to have been received from customers etc. Therefore, I deem it appropriate to remit the issue of addition u/s 69A and that of application of 8% rate to turnover, back to the file of Assessing Officer who should examine the same in the light of submissions made by the assessee. The assessee is also at liberty to file any evidence in support of his contentions that these amounts did not represent unexplained deposits and is also at liberty to file evidences to justify income from fertilizers and seeds business.

5. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 29/08/2022)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:29/08/2022

*Singh

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