



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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.40/ALLD/2022
Assessment Year: 2009-10

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| Narendra Singh, Kalyanpur, Allahabad, U.P. | v. | Income Tax Officer, Ward-1(3), Allahabad |
| PAN:BUVPS2136P | | |
| (Appellant) | | (Respondent) |

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|------------------------|----------------------------|----|------|
| Appellant by: | Shri. S.K. Yogeshwar, Adv | | |
| Respondent by: | Shri A. K. Singh, Sr. D.R. | | |
| Date of hearing: | 14 | 02 | 2023 |
| Date of pronouncement: | 16 | 02 | 2023 |

ORDER

VIJAY PAL RAO, J.M.:

This appeal by the assessee is directed against the order dated 27.10.2022 of the Id. CIT(A), NFAC, New Delhi for the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:-

“1. That the authority below was not justified in treating the total bank deposit Rs. 10,85,000/- as Income of the appellant.

2. That the authority below was not justified is not accepting the affidavit filed by Sri Shyamji Singh and without any further clarification, the total Bank deposit has been added as Income of the appellant.

3. That the order passed by the authority below is unjust and harassing the petty contractor.”

3. The assessee stated to be a Labour Contractor and did not file any return of income as the income from the contract business was below the minimum taxable limit. The assessee was also not having PAN till the assessment year under consideration. The AO received the information regarding the

cash deposit in the saving bank account of the assessee of Rs. 10,85,000/- during the financial year relevant to the assessment year under consideration. The AO issued the query letter dated 17.11.2015 seeking explanation from the assessee about the source of this deposit but there was no response to the said letter. The AO thereafter issued notice under section 148 on 31st March, 2016 by registered post. There was no compliance to the said notice. Thereafter, the AO issued notice under section 142(1) as well as notice under section 144 of Income Tax Act but those notices were also remained un-complied with. The AO, accordingly, proceeded to pass *ex parte* assessment order under section 144 by assessing the total income of Rs. 10,85,000/- being total amount deposited in the bank account. The assessee challenged the action of the AO before the CIT(A) and submitted that no notice was served upon the assessee and even the assessment order was served. Later, the assessee applied for certified copy which was supplied on 14th August, 2018 and consequentially, the appeal was filed before the CIT(A). This explained for condonation of delay in filing the appeal was accepted and the CIT(A) condoned the delay in filing the appeal. However, on merits, the CIT(A) did not accept the explanation of the source of the deposits of the money in the bank account of the assessee being a sum of Rs. 6,30,000/- was claimed as belongs to his brother Shri. Shyamji Singh, who wanted to purchase the land at Shankargarh but was not having bank account in that area. When the deal was not finalize on that day, he deposited his cash in the bank account of the assessee on 11.12.2008 and 26.12.2008. The assessee also claimed that the balance deposit was contract receipts of the assessee but could not produce any evidence in support of the said claim.

Accordingly, the CIT(A) confirmed the addition made by the AO and dismissed the appeal of the assessee.

4. Before the Tribunal, the learned AR of the assessee has submitted that out of Rs. 10,85,000/- deposited in the bank account of the assessee, a sum of Rs. 6,30,000/- deposited by the brother of the assessee Shri. Shyamji Singh. He has further explained that after the acquisition of the land by NTPC, his brother wanted to purchase a land at Shankargarh but the deal was not finalized and therefore, the money was deposited in the bank account of the assessee. He has submitted that his brother has no bank account in Shankargarh and therefore, the money was deposited in the bank account of the assessee which was subsequently withdrawn and repaid to his brother. He has referred to the affidavits of the assessee as well as his brother regarding the confirmation of the said deposits of Rs. 6,30,000/-. The learned AR has further submitted that the remaining amount of Rs. 4,55,000/- was assessee's labour contract business receipt and the income from the said receipt is below taxable limit. The learned AR has filed the bank statement alongwith the affidavits of the assessee and his brother and submitted that the various deposits and withdrawal details are reflected in the bank account statement to show that the deposits were subsequently withdrawn and paid to his brother. The AO has made the addition of the entire deposit without giving the credit of withdrawals. Thus, the learned AR has submitted that when the assessee has produced the confirmation from his brother, the same cannot be rejected without bringing any contrary fact and material on record. Thus, he has pleaded that the addition made by the AO may be deleted.

5. On the other hand, the learned DR has submitted that the assessee has not filed any return of income nor responded to the notice issued by the AO. Accordingly, the AO was having no option but to frame the assessment under section 144 of the Income Tax Act by treating the deposit in the bank account as undisclosed income of the assessee. He has further submitted that assessee has not submitted any evidence even before the CIT(A) to substantiate the claim of source of deposit either from the brother or being contract receipts. He has relied upon the orders of the authorities below.

6. I have considered the rival submissions as well as relevant material on record. The AO has framed the assessment under section 144 by noting the fact that due to non-availability of PAN filing of ITR could not be ascertained for the year under consideration. Since, there was no response or compliance on behalf of the assessee to the various notices issued by the AO, the assessment was completed at a total income of Rs. 10,85,000/- being the deposits in the bank account from undisclosed source. Thus, due to the assessee not having the PAN during the year under consideration, the notices issued by the AO might not be served because of the address difficulty. The CIT(A) has confirmed the additions made by the AO by rejecting the explanation furnished by the assessee despite the fact that the assessment was framed under section 144 and therefore, the explanation of the assessee was required to be verified by conducting a proper enquiry. Hence, in the facts and circumstances of the case, when the assessment order was passed *ex parte* and for want of any explanation and the AO assessed the entire amount deposited in the bank account as income of the assessee then the matter requires a proper

verification and examination of the correct facts by considering the explanation of the assessee. Though, the assessee has not given the details of the acquisition of the land of his brother and therefore, the money was available with the brother of the assessee as compensation against the land acquisition however, these facts can be ascertained by conducting a proper enquiry at the level of the AO. Accordingly, in the facts and circumstances of the case and in the interest of justice, the impugned order is set aside and the matter is remitted to the record of the Assessing Officer for *de novo* assessment after verification and examination of the relevant record to be filed by the assessee in support of the source of deposit in the bank account.

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

Order pronounced in the open Court on 16/02/2023 at Allahabad, U.P.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 16/02/2023
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Copy forwarded to:

1. Appellant-Ajit Tripathi
2. Respondent-CIT(A), Delhi
3. CIT(A)
4. CIT
5. DR