

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD 'SMC' BENCH, ALLAHABAD
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
ITA No.26/ALLD/2022
Assessment Year: 2007-08**

Irfan Ahmad, Village Jamkhuri, Mauaima, Allahabad, U.P. PAN-AHYPA4487E	v.	Income Tax Officer, Range-1(2), Allahabad
(Appellant)		(Respondent)
Assessee by:		Sh. Praveen Godbole, C.A.
Respondent by:		Sh. A.K. Singh, Sr. DR
Date of hearing:		13.02.2023
Date of pronouncement:		21.03.2023

ORDER

SHRI VIJAY PAL RAO, J.M.:

This appeal by the assessee is directed against the order dated 28.11.2019 of CIT(A) for the assessment year 2007-08.

2. There is a delay in filing the present appeal and assessee has filed an application for condonation of delay which is supported by an affidavit. The learned AR of the assessee has submitted that the impugned order was not received by the assessee till date and in between there was a lockdown from 24th March, 2020 therefore, the assessee could not take the necessary steps to obtain the certificate of the impugned order and then filed an appeal before the Tribunal. He has further submitted that after the normalization of pandemic situation, the assessee contacted his counsel and applied for certified copy vide application dated 24th June, 2022 but the same was not supplied to the assessee, as the certifying authority was not

available at the Allahabad office of the Department. The learned AR has submitted that thus to avoid the further delay the assessee has filed the present appeal after taking the impugned order from the Department. He has thus submitted that the delay in filing the appeal is neither intentional nor deliberate but due to unexceptional and unavoidable circumstances, the same may be condoned. He has relied upon the judgment of Hon'ble Supreme Court Hon'ble Supreme Court in ***Suo Moto Writ Petition(C) No.3 of 2020 reported in 441 ITR-722*** whereby the limitation was extended from 15th March, 2022 to 28th February, 2022 and further a period of 90 days was allowed by the Hon'ble Supreme Court w.e.f. 1st March, 2022 where the actual balance period of limitation was already expired or remain less than 90 days. The learned AR has pleaded that the appeal of the assessee may be admitted and decided on merits.

3. On the other hand, learned DR has objected to the condonation of delay and submitted that the impugned order of the CIT(A) was duly sent to the assessee through speed post. Since, there is no record of receiving back the said order unserved therefore, it cannot be presumed that the assessee did not receive the impugned order. He has further submitted that even after giving the benefit of the judgment of Hon'ble Supreme Court, there is a further delay in filing the appeal after 30th May, 2022 for which the assessee has not explained any satisfactory cause or reason.

4. I have considered the rival submissions as well as relevant material on record. The impugned order was passed by the CIT(A) on 28th September, 2019 and the present appeal was filed by the assessee on 28th July, 2022. In the normal circumstances, the appeal was to be filed before the expiry of limitation of 60 days from the date of communication of order or receipt of order passed by the CIT(A). However, the assessee has filed this appeal on 28th September, 2022 after a period of two years' and ten months. Thus, there is a delay of two years' and eight month in filing the present appeal. The assessee has stated in the affidavit filed in support of the application for condonation of delay that he did not received the impugned order of the CIT(A) and thereafter there was a lockdown from 24th March, 2020 due to Covid-19 pandemic. In the meantime, the Hon'ble Supreme Court in the case of *Suo Moto* cognizance for extending the limitation (supra) has held as under:-

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- i. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.*
- ii. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- iii. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual*

balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

- iv. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*
6. *As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn."*

5. Thus, the period of limitation from 15th March, 2020 to 28th February, 2022 was extended by the Hon'ble Supreme Court. The Hon'ble Supreme Court has further granted a period of 90 days from 01st March, 2022 onwards for filing the appeals, petitions, suit etc., if the limitation held is either expired before the 28th February, 2022 or going to immediately expire thereafter. Thus, a minimum period of 90 days was granted by the Hon'ble Supreme Court as extension of limitation for those cases where the limitation was either expired during the period from 15th March, 2020 to 28th February, 2022 or was going to immediately expire having less than 90 days available.

6. Having considered the facts and circumstances of the case, when the assessee has specifically stated on oath that the impugned order was not received by the assessee and even the certified copy applied by the assessee vide application dated 24th June, 2022 was also not supplied to the assessee as well as the extension of

limitation by Hon'ble Supreme Court due to Covid-19 pandemic situation, the delay in filing the present appeal is condoned.

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

"1. That in any view of the matter assessment made u/s 143 (3)/147 by order dated 25.03.2015 on income of Rs.19,16,470/- is bad both on the facts and in law.

2. That in any view of the matter proceeding u/s 147 as initiated on the basis of AIR information regarding cash deposit of Rs. 13,37,500/- in saving bank account is not correct and there was no escapement of income and the cash deposit was from definite sources hence entire action u/s 147 is bad in law.

3. That in any view of the matter addition of Rs. 18,18,600/- as made by the assessing officer on account of cash deposit in bank and his action as confirmed by CIT appeal is highly unjustified.

4. That in any view of the matter out of cash deposit of Rs. 18,18,600/-, Rs.4,81,100/-, Rs.3,45,000, 3,00,000/- received. from Naushad, Praveen Singh etc. was from definite sources hence both the two lower authorities failed to appreciate the facts and made addition in a arbitrary manner.

5. That in any view of the matter in remand report under rule 46A the assessing officer failed to take the cognizance of details filed and evidences placed on record and as per own whim and wishes declined to accept the facts which is highly unjustified.

6. That in any view of the matter finding and observation of both the two lower authorities with regard to addition of Rs. 18,18,600/- is totally incorrect and contrary to the actual facts of the case.

7. That in any view of the matter reserve his right to take any fresh ground of appeal before the hearing of appeal. It is therefore prayed that following grounds of appeal may kindly be adjudicated and record of finding."

8. The solitary issue arises from the grounds of appeal filed by the assessee is regarding the addition of Rs. 18,18,600/- made by the AO on account of unexplained cash deposit in the bank account

of the assessee. The learned AR of the assessee has submitted that out of the total deposit of Rs. 18,18,600/-, a sum of Rs. 12,23,363/- was on account of contract receipts on which the income of the assessee was less than the minimum tax limit and therefore, the assessee could not file any return of income. The remaining amount of Rs. 6,46,398/- was belonging to two persons namely Sh. Praveen Kumar Singh and Sh. Mohd Noushad, who got the demand draft issued from the account of the assessee by depositing the cash. The learned AR has further contended that in response to the notice issued under section 148 of Income Tax Act, the assessee filed his return of income declaring the income from contract receipts of Rs. 97,870/- derived from the gross receipt of Rs. 12,23,363/-. The balance amount of Rs. 03,01,400/- was deposited by one Sh. Praveen Kumar Singh, proprietor of M/s Anchal Communication, who is a close friend of the assessee and deals in the airtel products. He deposited the amount of Rs. 03,11,400/- for remittance of the said amount to Bharti Airtel by demand draft. This fact is reflected from the bank account of the assessee where an equal amount of cash was deposited just prior to the issuing bank draft in favour of the Bharti Airtel. The learned AR has submitted that the assessee submitted the confirmation alongwith the identity documents of Sh. Praveen Kumar Singh. He, then referred to the transaction of deposit of Rs. 3,45,000/- by Sh. Mohd Noushad for making the demand draft in favour of the Indian Oil Corporation Ltd. The AO made the addition as the notice issued under section 133(6) sent to

Sh. Praveen Kumar Singh at his shop address was not served on him. The AO called Sh. Mohd Noushad and recorded his statement without confronting the assessee and therefore, the statement recorded on the back of the assessee was the basis of the addition made by the AO in respect of the said amount of Rs. 3,45,000/- which was deposited by Sh. Mohd Noushad for collecting the demand draft in favour of IOC. He has further submitted that during the appellate proceedings, the assessee has produced the confirmation from Sh. Mohd Noushad but the same was not accepted by the AO in the remand proceedings. Similarly, the affidavit filed by the assessee of Sh. Praveen Kumar Singh, was also not considered by the AO as well as CIT(A) while passing the impugned order. The learned AR has relied upon the order of this Tribunal dated 06th August, 2021 in the case of **Waseem Ahmad vs. Income Tax Officer, 1(5), Allahabad** in ITA No. 42/Alld/2020, wherein an identical issue of deposits made in the bank account for obtaining the demand draft by Sh. Praveen Kumar Singh was involved and this Tribunal has remitted the matter to the record of the AO for conducting the proper enquiry and deciding the same as per the outcome of the verification and examination of evidences. Alternatively, the learned AR has submitted that the AO has made the addition of the entire deposit without considering the withdrawals made by the assessee therefore, at the best peak credit in the bank account can be considered for making any addition except the deposits explained by the assessee.

9. On the other hand, the learned DR has submitted that prior to issuing the notice under section 148, the AO issued two query letters dated 19.12.2013 and 17.02.2014 for preliminary verification of the information regarding cash deposit in the bank account but both the letters sent by the AO remained un-replied by the assessee. The assessee has not filed any return of income for the year under consideration and even upto assessment year 2008-09. Only in response to notice under section 148, the assessee filed the return of income declaring business profit of Rs. 97,870/- as per the provisions of section 44AD. However, no bank account details were mentioned even in the said return of income. The assessee has also not furnished any supporting evidence to show any business income and therefore, it was only an afterthought claim of business income by the assessee to explain the deposit in the bank account. The learned DR has pointed out that the assessee filed the return of income for the assessment years 2012-13 and 2013-14 and declared some different saving bank accounts in the HDFC bank instead of the bank accounts with the Axis Bank in which the deposits were made during the year under consideration. The assessee has failed to explain the source of deposit made in the bank account of the assessee as no corroborative evidence or details were filed to support the business receipts / contract receipt as claimed by the assessee. Further, the cash deposits claimed by the assessee attributable to Sh. Praveen Kumar Singh proprietor of M/s Anchal Communication, the AO noted that there is a difference in the

signatures on the confirmation filed during the appellate proceedings. As regards, the explanation regarding the cash deposit claimed to be attributable to Sh. Mohd Noushad, the AO examined him during the assessment proceedings and he denied to have made any transactions with the assessee or given any such confirmation which was filed by the assessee. Therefore, the assessee has failed to discharge its onus to explain the deposits in the bank account. He has relied upon the orders of the authorities below.

10. I have considered the rival submissions as well as relevant material on record. The assessee has not disputed that there was a cash deposited of more than Rs. 18 lac in the bank account of the assessee during the year consideration. The assessee explained the source of deposit to the extent of Rs. 12,23,363/- being contract receipt on which the assessee has declared the income of Rs. 97,870/- in the return of income filed in response to notice under section 148 of Income Tax Act. The claim of the assessee regarding the contract receipts of Rs. 12,23,363/- is not supported by any evidence or details as to how and from whom the assessee received these contract receipts. Further, the assessee did not file any return of income under section 139 and first time, the return of income was filed by the assessee, in response to notice under section 148 of Income Tax Act. Therefore, in the absence of any supporting evidence to corroborate the claim of contract receipt, the said explanation of the assessee cannot be accepted as satisfactory. However, since there are transactions of frequent withdrawals and

deposits in the bank account of the assessee therefore, taking only the deposits for the purposes of unexplained cash deposit in the bank account of the assessee is also not proper and justified. After rejecting the claim of contract receipts as source of deposit in the bank account, at least the withdrawal from the bank account is required to be considered as a source for the subsequent deposits. Therefore, I find substance and merit in the alternative plea of the learned AR that only a peak credit in the bank account can be considered for the addition, if any, on account of unexplained cash deposit. It is pertinent to note that the peak credit has to be ascertained only after the two other transactions for which the assessee has explained as attributable to one Sh. Praveen Kumar Singh and Sh. Mohd Noushad. From the bank account of the assessee, it is clear that there are entries of deposit of Rs. 01,05,000/- on 11th January, 2007 and corresponding entry of pay order in favour of the Bharti Airtel of the same date. Similarly, on 04th December, 2006 there was a cash deposit of Rs. 2,00,900/- and equal amount of demand draft was issued in favour of the Bharti Airtel. Therefore, the bank account entries *prima-facie* support the explanation of the assessee that these cash were deposited by Sh. Praveen Kumar Singh for obtaining the demand draft in favour of the Bharti Airtel for the remittance of the payment by using the bank account of the assessee due to the reason that the banking facility was open till 3:30 pm in the bank account of the assessee and there was an urgency for remitting the amount by Sh. Praveen

Kumar Singh to Bharti Airtel. The assessee has explained that Sh. Praveen Kumar Singh has confirmed these transactions in his confirmation as well as affidavit. The AO in the remand proceedings has rejected the confirmation and affidavit by suspecting the genuineness of the document. It is pertinent to note that without examining the person who has given the confirmation and signed the affidavit, it cannot be conclusively arrived to a decision that the confirmation and affidavit are bogus and not signed by the person. Similarly, the amount of Rs. 3,45,000/- which was deposited just prior to issuing the demand draft in favour of the IOC Mathura refinery and the assessee has claimed that this amount was deposited by Sh. Mohd Noushad for making demand draft. This explanation of the assessee has been *prima facie* corroborated by the entries in the bank, however until and unless, the person who allegedly deposited the amount is examined in the presence of the assessee the correct facts cannot be proved. Though, the AO has recorded the statement of Sh. Mohd Noushad in the absence of the assessee and the assessee was not confronted even with the statement. This Tribunal in the case of ***Waseem Ahmad vs. Income Tax Officer, 1(5), Allahabad*** in ITA No. 42/Alld/2020 dated 06.08.2021 has considered an identical issue regarding the claim of deposit made by Sh. Praveen Kumar Singh in para 5 and 6 as under:-

“5. I have considered the rival submissions as well as relevant material on record. The Assessing Officer made the addition on account of unexplained cash deposits in the bank account of the assessee as the assessee has not furnished any details or evidence to explain the source

during the assessment proceedings. Thus for want of any explanation of source of deposits, the Assessing Officer has made this addition.

6. Before the CIT(A), the assessee filed an additional evidence in the shape of bank account statement of the assessee as well as M/s Anchal Communication and Sh. Shukat Ullah Chauhan. The assessee also produced affidavits of these two persons as confirmation of payment and deposits in the bank account. The CIT(A) though did not accept the prayer of the assessee regarding admission of the additional evidence however, after rejecting the application, the CIT(A) has considered the statements of these two persons namely Sh. Praveen Kumar Singh and Sh. Shaukat Ullah Chauhan recorded during the appeal proceedings. Prima facie, it appears that the additional evidence sought to be filed by the assessee comprising of bank statements of assessee and these two other persons cannot be turned down simply on the reason that the assessee has not explained the reasons for non production of these evidence before the Assessing Officer. These documentary evidences are beyond the scope of any manipulation as maintained by the third party being banks where the accounts are maintained. Thus, so far as the bank statements are concerned, this is an independent evidence not prepared by the assessee and therefore, the same cannot be turned down. Assessee has also furnished affidavits of the parties namely Sh. Praveen Kumar Singh and Sh. Shaukat Ullah Chauhan, who have confirmed the deposits in the bank and payments made to the assessee by Sh. Shaukat Ullah Chauhan against the execution of work of contract of Allahabad Development Authority. Further, the CIT(A) for the assessment year 2008-09 has accepted these explanations being source of deposits made in the bank account of the assessee. The assessee has also filed a detail statement showing cash deposit in the assessee's bank account, comprising of M/s Anchal Communication as well as cash withdrawal from current account of Shaukat Ullah Chauhan. All these details and documentary evidences are required to be properly verified and examined. Since the Assessing Officer has passed an ex parte order under section 144 and CIT(A) after rejecting the application for admission of additional evidence has given a finding on merits therefore, in the facts and circumstances of the case and in the interest of justice, the matter is remanded to the record of the Assessing Officer for proper verification and examination of these evidences as well as explanation furnished by the assessee and then deciding the issue afresh after giving an opportunity of hearing to the assessee."

11. Accordingly, in view of the facts and circumstances discussed above as well as the earlier order of this Tribunal (supra), I am of the considered opinion that so far as the issue of deposit made by Sh. Praveen Kumar Singh and Sh. Mohd Noushad is concerned the same requires a proper verification and examination regarding the source of deposit by conducting a proper examination of these two persons at the presence of the assessee. The remaining claim of cash deposit of Rs. 12,23,363/- is required to be considered by taking the peak credit / deposit in the bank account of the assessee. Hence, the impugned order is set aside and the matter is remanded to the record of the AO for deciding the same afresh in the above terms.

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

Order pronounced on 21.03.2023 at Allahabad, U.P.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Dated: 21/03/2023

Allahabad

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Copy forwarded to:

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

By order
Sr. P.S.