

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, Division Bench , VARANASI**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.124/VNS/2020
Assessment Year:2009-10

Shri Rishikesh Shukla, S/o Shri K. P. Shukla, Sharma Colony, Waidhan,Singrauli-486886, Madhya Pradesh . PAN:BCMPS8094M	v.	Income Tax Officer, Ward-III(1), Mirzapur,U.P..
(Appellant)		(Respondent)

Appellant by	Shri K. R. Singh, Advocate
Respondent by	Shri A. K. Singh, Sr. D.R.
Date of hearing	13/04/2023
Date of pronouncement	19/05/2023

ORDER

PER RAMIT KOCHAR:A.M.

This appeal in I.T.A. No.124/VNS/2020 for assessment year 2009-10 has arisen from the appellate order dated 19/11/2019 passed by learned Commissioner of Income-tax (Appeals)(hereinafter called the CIT(A)) , Allahabad in Appeal No. CIT(A), Allahabad/10756/2015-16, and the appellate proceedings before Id. CIT(A) had arisen from assessment order dated 23.03.2015 passed by Id. Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961(hereinafter called "the Act")

2. The grounds of appeal raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Varanasi Circuit Bench, Varanasi (hereinafter called "the Tribunal") reads as under:

"1. The impugned reassessment order dated 19.11.2019 passed u/s 147 r.w.s. 143(3) is null and void because it suffers from jurisdictional material and it has been made without jurisdiction and authority of law. There is no record of satisfaction and sanction for issue of notice u/s 148.

2. The appellate order dated 19.11.2019 is against the natural justice because appeal has been disposed of without giving proper opportunity of hearing.

3. The appellate order dated 19.11.2019 is opposed to the law and facts of the case because Id. CIT (Appeals) has not considered the nature of business in confirming the estimated income @ 8% NP rate on contractual receipt of transportation business.

4. The Ld. CIT (Appeals) erred in confirming the addition of Rs.14,61,545/- on account of cash deposit in saving account which is a trading receipt as a part of transportation business.

5. The Id. CIT(A) erred in confirming the disallowance of 80C claim of Rs.34,800/- on account of not furnishing proof of investment."

3. At the outset, it is observed that this appeal is filed late beyond the time stipulated under the 1961 Act by 224 days. The assessee has filed an application requesting for condonation of delay. The reasons for filing this appeal delay as stated by the assessee beyond time stipulated u/s 253(3) in its application, is that the assessee duly paid appeal fee on 25.02.2020 i.e. within in the limitation period of filing this appeal as it is stated in Form No. 36 (the Id. CIT(A) order was stated to have been received on 02.01.2020), but due to onset of pandemic Covid-19, the appeal could not be filed in

time. This appeal ought to have been filed on or before 2nd March, 2020, but the assessee filed the appeal with Tribunal on 12th October, 2020. Thus, there is a delay of 224 days in filing this appeal. The assessee has prayed for the condonation of delay and has explained that the delay is not intentional nor willful but there is sufficient reason due to COVID-19 disease prevailing at that time, and more-over the appeal fee of Rs. 10,000/- was deposited in time on 25.02.2020 i.e. within the limitation period. The Learned D.R. fairly submitted that the Bench can take decision on this aspect of condoning the delay in filing of this appeal.

3b. After considering the material on record and after hearing both the parties, we have observed that there was COVID-19 disease prevailing starting with the first calendar quarter of 2020. This pandemic disease spread across the world causing loss of lives in large numbers as well people suffered due to this disease. There were various lockdowns imposed by Central and State Government in India which affected the normal working and functioning of the citizens of this country. The Government of India/State Governments also imposed lockdown starting from 25th March, 2020. It is also observed that Hon'ble Supreme Court in the case of *Suo Moto Civil Writ Petition (Civil) No. 3 of 2020* directed for suspension of limitation for filing the appeal effective from 15th March, 2020, which was extended from time to time and finally upto 28th February, 2022, by various orders passed by Hon'ble Supreme Court from time to time, keeping in view Covid-19 pandemic. Thus, although it is true that before the start of the suspension of limitation period vide Hon'ble Supreme Court Orders in the case of *Suo Moto Civil Writ Petition (Civil) No. 3 of 2020*, the limitation has already expired but taking a lenient view more-so that the assessee has duly paid appeal fee of Rs. 10,000/- on 25.02.2020(i.e. within limitation period) albeit appeal was not filed with tribunal within limitation period, as there

was COVID-19 disease prevailing at that time which has hampered the normal working and has caused havoc on the life and livelihood of the people across Globe, we condone the delay in filing this appeal late by the assessee beyond the time prescribed u/s 253(3) of the 1961 Act, and proceed to adjudicate this appeal on merit in accordance with law.

4. The brief facts of the case are that as per the database of the Department, the assessee has deposited cash in his savings bank account amounting to Rs.14,61,545/- during the financial year 2008-09 relevant to the assessment year 2009-10. Accordingly, reasons were claimed by department to have been recorded by the AO to reopen assessment, and notice u/s 148 was claimed by department to have been issued and duly served upon the assessee. The statutory notices u/s 143(2) and 142(1) of the 1961 Act were also claimed to have been issued and served by the AO to the assessee. The assessee had filed return of income showing total income of Rs. 2,81,795/-. The assessee participated in the assessment proceedings, which culminated into an assessment of the income of the assessee to the tune of Rs.17,92,690/- in the hands of the assessee, vide assessment order dated 23.03.2015 passed by the AO u/s 143(3) of the 1961 Act, wherein two additions were made by the AO. Firstly, on account of cash deposited in the savings bank account by the assessee to the tune of Rs. 14,61,545/- during the year under consideration, the source of which could not be explained by the assessee, which stood added by the AO as unexplained money and treated as income during the financial year in the hands of the assessee. The second addition was made by the AO of Rs.3,31,146/- on account of computation of income by applying profit @8% on the turnover of Rs. 41,39,328/-, which stood added by the AO as income from contract business, as the assessee was required by the AO to produce all his books of accounts, Balance Sheet, Trading and Profit and Loss

Account , all bills and vouchers for the expenses claimed in his business along with source of deposit of cash in his saving bank account of Rs. 14,61,545/- during the year under consideration, but the assessee produced only copy of income-tax return, audit report, Balance Sheet and Profit and Loss Account, and the assessee did not produce any bills, vouchers, relevant documentary evidences in support of his expenses , Balance Sheet and Profit and Loss Account despite several opportunities granted by the AO, which led AO to reject books of accounts u/s 145(3) of the 1961 Act . The AO also disallowed the claim of the assessee of Rs. 34,800/- under Chapter VIA of the 1961 Act.

5. Aggrieved by assessment framed by the AO, the assessee filed first appeal before learned CIT(A) but since there was non appearance by the assessee, the learned CIT(A) dismissed the appeal of the assessee. The Id. CIT(A) referred to statement of fact filed by the assessee in his appellate order, which is reproduced as hereunder:

" Introduction

The appellant was engaged in undertaking the business of loading , unloading and transporting contracts. The vehicles are owned by third parties and the appellant pays charges to the vehicle owners. The original Return of income for the relevant Assessment Year was filed on 30-09-2009 showing taxable income at Rs. 2,81,800/- computed under the provisions of the Act. The said return was processed vide intimation u/s 143(1) accepting the returned income and determining a refund of Rs. 79,430/- , Notice u/s 142(1) of the Act was issued by the Ld. Income Tax Officer (here-in-after referred to as Ld. ITO) on 22-12-2014 fixing the date of hearing on 31-12-2014. On the appropriate date, the counsel of the assessee requested to grant some more time since the appellant is in the process to collect and complete the details as required by Ld. ITO. The case was adjourned and later on in hearings the counsel of the appellant submitted the Copy of Bank Statement , Audited Balance Sheet , Income Tax Return , Copy of Bills and Vouchers and documentary evidences of cash

deposits in Saving Bank Account of the Appellant and documentary evidences of cash deposits in Saving Bank Account of the Appellant and provided the necessary information like FAMILY TREE , Gross Profit , Net Profit Comparison Chart etc. as required by the counsel of the appellant on 15-09-2015. The addition and/or modifications made by the Ld. ITO are briefly stated here-in-below:

The reasons recorded by the Ld. ITO that assessee did not cooperate is not justified since the counsel of the assessee regularly attended the hearings and was in the process to compile and collating the details. The impugned order passed u/s 143(3) is without considering the documents submitted with the Ld. ITO and is bad in law and is liable to be quashed which is without following the principle of natural justice.

The Ld. ITO had passed order u/s 143(3) making an addition of Rs. 14,61,545/- as Unexplained Cash Deposit is without considering documentary evidences and the facts produced before him by the counsel of the assessee in support of it and hence bad in law and shall be quashed.

The appellant is carrying out business of loading, unloading and transporting contract. The assessee does not own any vehicle and all vehicles have been taken from third parties to whom fixed amount has been paid. Further in providing loading and unloading service wages and other expenses are incurred. However, in the order passed u/s 143(3) , the LD. ITO did not consider the said expenditure and taxed the gross income which is erroneous and bad in law. In the order u/s 143(3) of the Act, interest u/s 234B and 234D were levied at Rs. 3,61,224/- and Rs. 20,218/- respectively, on grant of relief as aforesaid there will be consequential reduction in interest u/s 234B and 234D. The appellant is aggrieved by the aforesaid additions and/or disallowance . Hence, the appeal is made."

5b. The Id. CIT(A) dismissed the appeal of the assessee, vide appellate order dated 19.11.2019, by holding as under:

"Decision:

Notices dated 11.09.2017, 17.11.2017,18.12.2017 , 15.05.2018 , 30.01.2019 , 25.07.2019 , 07.09.2018, 12.10.2019 and 09.11.2019 fixing the date for compliance on 21.09.2017 , 29.11.2017 ,

20.12.2017 , 29.05.2018 , 11.02.2019 , 08.08.2019 , 16.09.2019 , 21.10.2019 and 18.11.2019 were issued through official Income Tax Business Application (ITBA network)/speed post. These notices were served on the e-mail address/speed post submitted by the applicant while filing the appeal. No written submission or any paper books has been filed in support of any of the grounds of appeal in this office. It appears that the assessee is not interested in pursuing his own appeal. The case is being decided in absence of any submission or attendance by the assessee or his/her A.R. On each of these days when the case was fixed for hearing , it is seen that the assessee has remained absent or only two occasions the A.R. of the appellant has moved adjournment application , despite the fact that notice for the specific dates of hearing have been consistently been sent to the address provided by the assessee in its memo of appeals. In these circumstances, it can safely presumed that the assessee has nothing to submit any material on support of grounds of appeal. The contents of the AO's order have been perused and I have no reasons to interfere with the stand taken by the AO. During the appeal proceedings also, the details and evidences in support of the reasons for non compliance made are not filed. Therefore, the assessment order is not interefered with. In the result, appeal is dismissed. Ground nos. 4 to 6 are general in nature, hence not adjudicated upon.

In the result, appeal is dismissed."

6. Aggrieved by appellate order dated 19.11.2019, the assessee has come in appeal before the Tribunal . The Id. Counsel for the assessee challenged the jurisdiction of the Assessing Officer to frame the assessment. It is explained by the learned counsel for the assessee that the assessment was made by the Assessing Officer situated at Mirzapur i.e. ITO, Mirzapur(U.P.), but the notice u/s 148 was issued by the Assessing Officer located at Rewa, M.P. i.e. ITO, Rewa(M.P.). Further it is claimed that no order has been passed by the CIT u/s 127(2) of the Act for transferring the case from Rewa(M.P.) to Mirzapur(U.P.). The Id. Counsel for the assessee challenged the service of notice issued by the ITO, Rewa u/s 148. The learned counsel for the assessee has explained that the assessee has opened a savings bank account in the bank falling within the jurisdiction of ITO, Rewa(M.P.), in

which cash was deposited by the assessee to the tune of Rs. 14,61,545/- during the year under consideration. It was submitted that the Assessing Officer at Rewa(M.P.) has issued notice u/s 148 although the assessee was regularly assessed by the Assessing Officer at Mirzapur, U.P.. The learned counsel for the assessee has also challenged that no notice u/s 148 was served on the assessee. It is also claimed that there is no valid transfer of jurisdiction from ITO,Rewa(M.P.) to ITO, Mirzapur(U.P.).

6b. On the other hand, learned D.R. has vehemently argued that the Department has duly followed the SOP issued by the CBDT(Reference Instruction No. 01/2009 dated 12.02.2009) , and the AIR information was received from the bank situated within the jurisdiction of ITO, Rewa, M.P. that cash has been deposited by the assessee in the aforesaid bank account opened within the jurisdiction falling under ITO, Rewa, M.P.. The assessee has not disclosed PAN while opening the aforesaid bank account , and since the bank account was opened without declaring PAN and the huge amount of cash was deposited by the assessee in his bank account during the year under consideration , the Revenue has validly started the enquiry but the assessee did not respond to notices sent by the ITO, Rewa, M.P., and then the AO i.e. ITO, Rewa, M.P. had issued notice u/s 148 of the Act. The notice u/s 148 was issued within four years from the end of the assessment year i.e. on 10.03.2014 , and the assessee has not challenged the issue of jurisdiction of the Assessing Officer u/s 124(3)(a) and 124(3)(b) within the stipulated period ,and the issue of jurisdiction was not challenged even before learned CIT(A), and these legal grounds are raised for the first time before the tribunal. It was although submitted that learned CIT(A)'s order was an ex-parte order. The assessee never raised jurisdictional issues before AO as well Id. CIT(A), and it is for the first time that jurisdictional

issues are raised before the tribunal. The learned D.R. has relied on the judgment(s) and orders of Hon'ble Allahabad High Court in the case of CIT v. All India Children Care & Educational Development Society (2014) 41 taxmann.com 20(All. HC) and in the case of Bal Chand Jain & Sons v. DCIT, reported in (2014) 41 taxmann.com 524(All. HC), to contend that tribunal cannot decide the issue of jurisdiction of the AO, when the same was not raised before the AO . It was submitted that no order u/s 127 was required as the assessee was rightly assessed at Mirzapur by ITO, Mirzapur, as his jurisdiction lies at Mirzapur and the aforesaid SOP was duly followed and there is no question of quashing the assessment as null and void. It was submitted by Id. DR that the assessee was filing return of income with ITO, Mirzapur, U.P. , and when the assessee disclosed this fact before the ITO, Rewa, M.P. , his case was transferred to ITO, Mirzapur, U.P., where the assessee was filing his return of income. Learned D.R. also submitted that no notice u/s 148 was issued by Income Tax Officer, Mirzapur, and the powers to invoke reassessment was done by ITO, Rewa, MP u/s 147/148.

6c.The Learned counsel for the assessee submitted that no transfer order was passed u/s 127(2) by Id. CIT, and hence the transfer of jurisdiction from ITO, Rewa(M.P.) to ITO, Mirzapur(U.P.) was not valid and proper. The Id. Counsel for the assessee relied upon section 282 submitted that the provision has been violated. Both the parties have agreed that learned CIT(A) has not decided the issue w.r.t. additions made by the AO on merit, and it is an ex-parte order passed by Id. CIT(A) without deciding the issues on merits of the additions made by the AO.

7. We have considered the contentions of both the parties and perused the material on record. The brief facts of the case are that as per the database of the Department, the assessee has deposited cash in his savings

bank account amounting to Rs.14,61,545/- during the financial year 2008-09 relevant to the assessment year 2009-10. Accordingly, reasons were claimed by department to have been recorded by the AO to reopen assessment, and notice u/s 148 was claimed by department to have been issued and duly served upon the assessee. The statutory notices u/s 143(2) and 142(1) of the 1961 Act were also claimed to have been issued and served by the AO to the assessee. The assessee had filed return of income showing total income of Rs. 2,81,795/-. The assessee participated in the assessment proceedings, which culminated into an assessment of the income of the assessee to the tune of Rs.17,92,690/- in the hands of the assessee, vide assessment order dated 23.03.2015 passed by the AO u/s 143(3) of the 1961 Act, wherein two additions were made by the AO. Firstly, on account of cash deposited in the savings bank account by the assessee to the tune of Rs. 14,61,545/- during the year under consideration, the source of which could not be explained by the assessee, which stood added by the AO as unexplained money and treated as income during the financial year in the hands of the assessee. The second addition was made by the AO of Rs.3,31,146/- on account of computation of income by applying profit @8% on the turnover of Rs. 41,39,328/-, which stood added by the AO as income from contract business, as the assessee did not produce relevant information called for by the AO. The AO also disallowed the claim of the assessee of Rs. 34,800/- under Chapter VIA of the 1961 Act.

The Id. CIT(A) dismissed the appeal of the assessee, ex-parte, without discussing issues on merits and without giving his independent reasoning of his own. The operative part of the appellate order passed by Id. CIT(A), is reproduced hereunder:

"Decision:

Notices dated 11.09.2017, 17.11.2017, 18.12.2017, 15.05.2018, 30.01.2019, 25.07.2019, 07.09.2018, 12.10.2019 and 09.11.2019 fixing the date for compliance on 21.09.2017, 29.11.2017, 20.12.2017, 29.05.2018, 11.02.2019, 08.08.2019, 16.09.2019, 21.10.2019 and 18.11.2019 were issued through official Income Tax Business Application (ITBA network)/speed post. These notices were served on the e-mail address/speed post submitted by the applicant while filing the appeal. No written submission or any paper books has been filed in support of any of the grounds of appeal in this office. It appears that the assessee is not interested in pursuing his own appeal. The case is being decided in absence of any submission or attendance by the assessee or his/her A.R. On each of these days when the case was fixed for hearing, it is seen that the assessee has remained absent or only two occasions the A.R. of the appellant has moved adjournment application, despite the fact that notice for the specific dates of hearing have been consistently been sent to the address provided by the assessee in its memo of appeals. In these circumstances, it can safely presumed that the assessee has nothing to submit any material on support of grounds of appeal. The contents of the AO's order have been perused and I have no reasons to interfere with the stand taken by the AO. During the appeal proceedings also, the details and evidences in support of the reasons for non compliance made are not filed. Therefore, the assessment order is not interfered with. In the result, appeal is dismissed. Ground nos. 4 to 6 are general in nature, hence not adjudicated upon.

In the result, appeal is dismissed."

We have observed that both the parties have duly filed their respective paper books which are placed on record. It is also observed that learned CIT(A) has not decided the issue's w.r.t. two additions made by the AO, on merits and has dismissed the appeal of the assessee ex-parte. The assessee has deposited cash in his bank account situated within the jurisdiction of ITO, Rewa, M.P.. The Assessing Officer at Rewa(M.P.) got the information that the assessee has deposited cash of Rs.14,61,545/- and based upon that the case of the assessee was reopened u/s 148. Initially inquiries were made but there was no response from the assessee. The

assessee has challenged the service of notice u/s 148. The Department has also placed several documents regarding service of notice to submit that service of notice u/s 148 was valid. The assessee on the other hand is disputing the service of notice u/s 148, which is an important legal issue to be adjudicated upon. Further, the assessee has raised important legal issues concerning transfer of jurisdiction of his case u/s 127, from ITO, Rewa, M.P. to I.T.O., Mirzapur, U.P. . Reference is drawn to the decision of Hon'ble Supreme Court in the case of NTPC Limited v. CIT , reported in (1998) 229 ITR 383(SC) These legal issue's were never raised before the authorities below, and it requires verification/ investigation of facts. We have also observed that the provisions of section 250(6) has not been complied with by Id. CIT(A) as the Id. CIT(A) was obligated to decide the issues on merits of the additions made and give his own independent reasoning on all the grounds of appeals raised by the assessee , which was not done by Id. CIT(A), and the order of learned CIT(A) is not sustainable keeping in view provisions of Section 250(6). Under these facts and circumstances of the case, we deem fit and proper , in the interest of justice and fairness to both the parties , that the matter can go back to the file of learned CIT(A) who shall adjudicate the legal grounds challenging the jurisdiction of Assessing Officer, Mirzapur to frame assessment and also on the ground that there was no valid transfer of the case keeping in view provisions of Section 127 of the Act, and any other legal ground raised by the assessee. The learned CIT(A) shall also adjudicate issues on the merits of the additions made by the AO. The order of the Id. CIT(A) is set aside and matter remanded back to Id. CIT(A). The appeal of the assessee is allowed for statistical purposes. We order accordingly.

8. Thus , in the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on /05/2023 at Allahabad, U.P. in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(RAMIT KOCHAR)
Accountant Member

Dated:19 05/2023
Varanasi/Allahabad/Mumbai
*Singh

Copy of the order forwarded to :

1. Appellant-Shri Rishikesh Shukla, S/o Mr. K P Shukla , Sharma Colony, Waidhan , Singrauli-486886
2. The Respondent –ITO, Ward III(1), Mirzapur-231001, U.P.
3. Concerned CIT, Varanasi
4. The Guard File
5. The Id. Sr.-D.R., ITAT, Circuit Bench, Varanasi
6. The Id. CIT(A), Allahabad