

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCHES, ALLAHABAD**
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No. 97/Alld/2023
Assessment Year: 2011-12

Smt. Swatantra Mishra, F-6 Tulsiani Enclave, Lowther Road, George Town, Allahabad, U.P.	v.	Income Tax Officer, Ward-1(5), Allahabad
PAN:AXVPM0471B		
(Appellant)		(Respondent)

Assesseeby:	None (Application)
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	14.09.2023
Date of pronouncement:	15.09.2023

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by assessee, arising out of appellate order dated 23.05.2023 passed by learned Commissioner of Income-tax (Appeals) (National Faceless Appeal Centre (NFAC)) (DIN & Order No. ITBA/NFAC/S/250/2023-24/1053107065(1)-Appeal No. CIT(A), Allahabad/10251/2018-19) for assessment year 2011-12, which appeal in turn has arisen from assessment order dated 21.12.2018 passed by learned Income Tax Officer, Ward-1(5), Allahabad (hereinafter called "the AO") u/s 144 of the Income-tax Act, 1961.

2. The assessee has raised following grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Allahabad Bench, Allahabad:-

"1. That in any view of the matter the assessment order as framed u/s 144B of the Act dated 21.12.2023 is illegal invalid bad in law, because no reasonable opportunity was allowed nor the facts were properly considered by the assessing officer hence the assessment order liable to be declared invalid.

2. That in any view of the matter the learned CIT (A) erred in passing ex-parte order dated 23.05.2023 without giving reasonable opportunity to the appellant.

3. That in any view of the matter the learned CIT(A) failed to appreciate that the notice of hearing which was fixed on two dates as stated in the order was not received by the appellant hence ex-parte decision is not correct.

4. That in any view of the matter that the CIT(A) failed to appreciate that he ought to have verified where proper notices has been served or not before passing ex-parte order. In this background, the appellant urges that the order passed by the CIT(A) be set aside.

5. That in any view of the matter the addition at Rs.38,68,300/- by saying/alleging unexplained cash deposit in bank by the appellant is highly unjustified in the facts and circumstances of the case when the debit side in bank account or earlier bank account ignored and when the deposit made from time to time from definite sources.

6. That in any view of the matter the two lower authorities considered only credit side of the bank account and ignored the debit side as well as fail to considered the source of credit side and also fail to provide opportunity to the assessee under this circumstance addition of Rs.38,68,300/- made and maintained by the lower authorities are unwarranted.

7. That in any view of the matter addition of Rs. 10,00,000/- by alleging unexplained investment in mutual fund made by the assessing officer and his action as confirmed by CIT(A) is not correct at all both the authorities measurable failed to considered the source of deposit in bank as well as failed to considered source of fund utilized in purchase of mutual fund thus the addition made in arbitrary manner hence liable to be deleted.

8. That in any view of the matter the addition made under two heads without considering the fact, without considering the past history, without considering the source hence additions are unwarranted.

9. That in any view of the matter the two lower austerities acted in mechanical manner and without providing proper opportunity and without considering the source of deposit in bank as well as failed to consider the source of investment in mutual fund hence addition liable to be deleted.

10. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal.”

3. The brief facts of the case are that the assessee filed return of income on 30.01.2012 declaring income from business of Rs. 4,27,350/-. However, no other details regarding business were given in the return of income. Proceedings under section 147 read with Section 148 were initiated by AO on the basis of AIR information received that the assessee has made cash deposit of Rs. 46,18,300/- in

four bank accounts , and also there was purchase of Mutual Funds amounting to Rs. 10,00,000/-. After recording of reasons and obtaining prior approval from Id. PCIT, Allahabad, the AO issued notice u/s 148 dated 23.03.2018 which was stated to be duly served on the assessee. The assessee did not file any return of income in pursuance to notice u/s 148. Statutory notices were issued by the AO, and claimed to have been duly served on the assessee. In reassessment proceedings, the assessee only submitted before the AO that similar notice regarding cash deposit of Rs. 46,18,300/- has been received in the case of her husband , Sh. Sushil Kumar Mishra. The assessee did not give further replies/explanations before the AO, and the AO proceeded to assess income based on material on record to the best of judgment . The AO observed from assessee's bank statement that following are the unexplained cash deposit in the bank account(s) of the assessee:-

<i>Bank account number</i>	<i>Cash deposits</i>	<i>Interest credited</i>
<i>Axis Bank account no.910010010053220</i>	<i>Rs. 15,25,300/-</i>	<i>Rs.16,807/-</i>
<i>Axis Bank account no. 910010025311883</i>	<i>Rs. 23,43,000/-</i>	<i>Rs. 49,101/-</i>
<i>Total deposits</i>	<i>Rs. 38,68,300/-</i>	<i>Rs. 65,908/-</i>

As the nature and source of cash deposits were not explained , the addition was made by the AO of Rs. 38,68,300/- to the income of the assessee. Further, addition was made by the AO with respect to bank interest of Rs. 65,908/- , and also unexplained investment in Axis Bank Mutual Fund of Rs. 10,00,000/-, were added by AO to the income of the assessee, vide reassessment order dated 21.12.2018 passed by AO u/s 144 of the 1961 Act.

4. Aggrieved by reassessment order passed by the AO, the assessee filed first appeal and raised as many as 14 grounds of appeal. The learned CIT(A) issued three notices fixing date of hearing(s) on 05.01.2021, 15.10.2021 and 18.05.2023, but there was no response from the assessee. The Id. CIT(A) observed that the assessee is not interested in pursuing its appeal as even no adjournment application was

filed. The ld. CIT(A) sustained the additions as were made by the AO, by confirming the reassessment order passed by AO , and the appeal of the assessee stood dismissed by ld. CIT(A).

5. Still Aggrieved, the assessee has now filed second appeal with Tribunal. None appeared when the appeal was called for hearing. The assessee has filed an written application dated 13.09.2023 submitting that ex-parte assessment order was passed by ld. AO , as also appellate order passed by ld. CIT(A) was an ex-parte order. It is stated in the said application that proper opportunity of heard was not granted by both the authorities below. The ld. Sr. DR submitted that the assessee has not submitted proper details before the AO . It was submitted that the appellate order passed by ld. CIT(A) is an *ex parte* appellate order as the assessee did not appeared before ld. CIT(A). However, it was fairly submitted by ld. Sr. DR that ld. CIT(A) has dismissed appeal of the assessee without discussing the issues on merits merely on the ground that the assessee did not comply with the notices issued by ld. CIT(A) and no reply/ evidences were filed.

6. After hearing ld. Sr. DR and perusing material on record, we are of the considered view that ld. CIT(A) has dismissed the appeal of the assessee *ex parte as the assessee* did not filed replies/evidences/explanations before ld. CIT(A) an even adjournment applications were not filed. It is further observed that ld. CIT(A) had not adjudicated the appeal of the assessee on merits of the additions and merely reassessment order passed by ld. AO was confirmed. There is no independent application of mind by ld. CIT(A) while sustaining additions made by the AO on merits, and hence the appellate order passéd by ld. CIT(A) is not in compliance with provisions of Section 250(6). It is also observed that the assessee is equally responsible for her woes, as the assessee did not submitted any replies/evidences/explanations before ld. CIT(A) and even adjournment applications were not filed, while ld. CIT(A) gave as much as three dates of hearings. Under the said present facts and circumstances of the case and in the interest of

justice and fair play, it is considered proper and fit to restore the matter back to the file of ld. CIT(A) for fresh adjudication on merits, in accordance with law, after giving proper opportunity of being heard to the assessee as well AO. The assessee is directed to file all the replies, evidences and explanations as called for by ld CIT(A) in denovo appellate proceedings , which shall be adjudicated by ld. CIT(A) on merits in accordance with law.. Needless to say that powers of ld. CIT(A) are *co-terminus* with the powers of the AO. In the result, appeal of the assessee is allowed for statistical purposes. We order accordingly.

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

Order pronounced in Open Court on 15/09/2023 at Allahabad, U.P..

Sd/-

**[ABY T. VERKEY]
JUDICIAL MEMBER**

DATED: 15/09/2023

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Copy forwarded to:

1. Appellant –Mrs.Swantra Mishra, F-6, Tulsiani Enclave, Lowther Road, George Town, Allahabad, U.P.
2. Respondent – The ITO, Ward 1(5), Aayakar Bhawan, M G Road, Allahabad, U.P.
3. Sr. DR, ITAT, Allahabad,U.P.
4. CIT, Allahabad, U.P.
5. The CIT(A), Allahabad, U.P.

Sd/-

**[RAMIT KOCHAR]
ACCOUNTANT MEMBER**