

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.137/Ind/2023
Assessment Year: 2008-09

Smt. Sushila Simhal, 58, Shyamla Hills, Bhopal (Assessee/Appellant)	बनाम/ Vs.	Income-tax Officer, 2(1), Bhopal (Revenue/Respondent)
PAN: ACS8274L		
Assessee by	Shri Ashish Goyal and Shri N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	06.05.2024	
Date of Pronouncement	15.05.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 28.02.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 30.12.2010 passed by learned Income-tax Officer, 2(1), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2008-09, the assessee has filed this appeal on following grounds:

- "(1) On the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding that the unsecured loans taken by the appellant from the following 3 persons totaling Rs. 36,73,317/- are unexplained credits and in confirming the addition of Rs. 36,73,317/- towards unexplained credits u/s 68 of the Income-tax Act, 1961:

1. Narendra Kumar Simhal HUF	Rs. 34,33,317.00
2. Parvati Devi	Rs. 1,50,000.00
3. Shanti Devi Agrawal	<u>Rs. 90,000.00</u>
	<u>Rs. 36,73,317.00</u>

- (2) On the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding that the amount of Rs. 16,75,000/- in cash deposited by the appellant in her saving bank account No. 3060 in the Malviya Nagar Branch of Union Bank of India on different dates was unexplainable and in confirming the addition of Rs. 16,75,000/- towards unexplained credits u/s 68 of the Income-tax Act, 1961."

2. The background facts leading to present appeal are such that the assessee filed return of income for AY 2008-09 declaring a total income of Rs. 3,97,000/- but subsequently filed a revised-return declaring a total income of Rs. 4,99,890/-. The case was then selected for scrutiny and the AO ultimately passed order u/s 143(3) after making two additions, namely (i) addition of Rs. 36,73,117/- on account of unexplained unsecured loans taken by assessee and (ii) addition of Rs. 16,75,000/- on account of unexplained deposits in bank a/c. Aggrieved, the assessee carried matter in first-appeal but did not get any success. Now, the assessee has come in next appeal before us.

3. On hearing learned representatives of both sides and perusal of orders of lower-authorities, it is found that the AO has noted in Para 3.1 & 3.2 of assessment-order that the assessee was asked to furnish details of loans accepted but the assessee did not furnish any information. The AO noted that in absence of any information about the identity, genuineness and creditworthiness, the loans taken during the year are treated as 'unexplained credit' and addition made. Same way, in Para No. 4.2 of

assessment-order, the AO has noted that the assessee has not furnished any document substantiating the source of deposit in bank a/c, therefore the deposits made in bank a/c are treated as 'unexplained credit' and addition made. Thus, the AO has made both additions on the footing that the assessee did not file required information. Further, the CIT(A) has upheld additions basically for the reasoning that the assessee has not filed required information to AO. The CIT(A) has, vide Para 4.1 of his order, also rejected the evidences placed by assessee on the footing that the assessee filed newer evidences before him but did not file any application for admission of new evidences under Rule 46A of Income-tax Rules, 1962.

4. Contrary to what is mentioned by lower-authorities, Ld. AR pleaded before us that the assessee made submission and filed evidences to AO during assessment-proceeding but, however, the assessee's submission has not been considered, instead the AO has mentioned that the assessee has not filed evidences. In support of his pleading, Ld. AR referred certain papers filed in paper-book. The AR also pointed out that the assessee categorically informed to CIT(A) during first-appellate proceeding in the letter filed at Page 1-3 of Paper-Book about various evidences having been filed to AO. Due to such insistence of Ld. AR, the bench directed the revenue/respondent to produce assessment-record. In response, following letter of AO is filed by revenue:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-5(1), BHOPAL
ROOM NO. 213, AAYAKAR BHAWAN, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL – 462011
E-mail ID: bhopal.dcit5.1@incometax.gov.in & Phone no.: 0755-2426459

F.No. DCIT-5(1)/BPL/ITAT/2024-25/ 94

Date: 23/04/2024

To,

✓ The Commissioner of Income Tax (DR),
ITAT, Indore, C.G.O. Building 2nd Floor, A-Wing, White –Church Road,
Indore - 452001.

// Kind attention : ITO (ITAT) //

Sir,

Subject: Appellate Proceeding in the case of Smt. Sushila Simhal, ITAT No. 137/Ind/2013, for the A.Y. 2008-09, PAN : ACSPS8274L regarding.

Kindly refer your good office letter No. CIT(DR)/ITAT/Ind/2023-24/315 dated 16/04/2024 to the above mentioned subject.

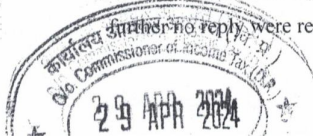
In this regard, it is stated that vide this office letter dated that 20/03/2024 the undersigned informed that the case record of Smt. Sushila Simhal PAN ACSPS8274L A.Y. 2008-09 could not be traceable due to various timbering issues.

Further, on verification of PAN data, it is found fund that the pan of the assessee was laying with various jurisdictional assessing officers. The details of officers is as under :

SI No.	PAN	Transfer from	Transfer to	Transfer Date
1	ACSPS8274L	DCIT/ACIT 2(1), Bhopal	DCIT/ACIT 5(1), Bhopal	06/10/2020
2	ACSPS8274L	ITO 1(1), Bhopal	DCIT/ACIT 2(1), Bhopal	06/05/2019
3	ACSPS8274L	ITO 2(1), Bhopal	ITO 1(1), Bhopal	15/06/2018
4	ACSPS8274L	ITO 1(1), Bhopal	ITO 2(1), Bhopal	16/02/2018
5	ACSPS8274L	ITO 2(1), Bhopal	ITO 1(1), Bhopal	09/02/2018
6	ACSPS8274L	DCIT/ACIT 2(1), Bhopal	ITO 2(1), Bhopal	04/02/2012
7	ACSPS8274L	ITO 2(1), Bhopal	DCIT/ACIT 2(1), Bhopal	26/12/2011
8	ACSPS8274L	ITO 3(1), Bhopal	ITO 2(1), Bhopal	01/05/2010
9	ACSPS8274L	ITO 2(1), Bhopal	ITO 3(1), Bhopal	08/04/2010

Thereafter mail were sent to the Income Tax Officer – 1(1), Income Tax Officer – 2(1) and Income Tax Officer -3(1) on 22/04/2024 with request to provide the case record if available,

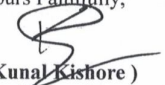
but no reply were received till date (Copy of Mail enclosed)



Further, after timbering proceeding and F.Y. 2023-24 all possible efforts has been made to find out the case record of Smt. Sushila Simhal of A.Y. 2008-09 (Inspector report enclosed). However, the cases record of the assessee is not traceable.

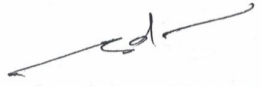
Encl. As above.

Yours Faithfully,


(Kunal Kishore)
Deputy Commissioner of Income Tax -5(1),
Bhopal.

Copy to :

1. The Jt. Commissioner of Income Tax Range-4, Bhopal for kind information.


Deputy Commissioner of Income Tax -5(1),
Bhopal.

5. On the basis of above letter, Ld. DR representing revenue submitted that the case-record of assessee is not traceable at present. Ld. AR for assessee submitted that the assessee is still ready to file documents to authorities, if an opportunity is given. The issue is deliberated and both sides agreed that it would be most appropriate and fair in such circumstance to re-store this matter to the file of AO so that the assessee can re-submit all details/documents required by AO. Accordingly, we remit this matter back to AO for adjudication afresh after giving necessary hearings to assessee and after considering assessee's representation. The assessee is directed to ensure proper participation before AO and the AO shall pass order without being influenced by his previous order. Ordered accordingly.

6. Resultantly, this appeal is allowed for statistical purposes.

Order pronounced in open court on 15.05.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15.05.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore