

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER  
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.23/Lkw/2024  
Assessment Year: 2017-18  
&  
Stay Application No.06/Lkw/2024  
(in I.T.A. No.23/Lkw/2024)  
Assessment Year:2017-18

Neha Singh, B-1/3, Sector-D, Aliganj, Lucknow. PAN:EBYPS4547H (Appellant)	Vs.	Income Tax Officer-3(2), Lucknow.  (Respondent)
---	-----	--

Appellant by	Shri Bahadur Singh, A.R.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

**ORDER**

**PER ANADEE NATH MISSHRA:A.M.**

(A) Appeal vide I.T.A. No.23/Lkw/2024 has been filed by the assessee for assessment year 2017-18 against impugned appellate order dated 04/01/2024 (DIN & Order No.ITBA/NFAC/S/250/2023-24/1059379177(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) Assessment order dated 01/10/2019 was passed by the Assessing Officer u/s 144 of the Income Tax Act, 1961 ("IT Act" for short) wherein an

addition of Rs.1,10,95,252/- was made u/s 69D read with section 115BBE of the IT Act. The assessee filed appeal against the aforesaid assessment order before the CIT(A). Vide impugned appellate order dated 04/01/2024, the learned CIT(A) dismissed the assessee's appeal. The present appeal, before us, has been filed by the assessee in which grounds of appeal are as under:

- "1. *Because initial notice dated 15-12-2017 had been issued by Shri Rajiv Mohan, Dy. CIT, it is not clear as to how the proceedings initiated by Dy. CIT have been taken over and processed by ITO-3(2).*
2. *Because ITO-3(2) vide letter dated 06-06-2019, without containing any DIN, had issued a show cause notice citing an earlier notice dated 13-03-2018 under section 142(1)(i) stating the same to have been served on this appellant on 15-12-2017. The ITO-3(2) was replied on 14-06-2019 accordingly, informing that no such notice dated 13-03-2018 was received by the appellant.*
3. *Because ITO-3(2) vide letter dated 26-08-2019 issued a notice u/s 129 of IT Act, informing that due to change of incumbent all further proceedings in the case would be heard by him. Simultaneously a show cause notice was also issued as to seek information about source of cash deposited during the period of demonetization in respect of three SB Accounts as noted hereunder;*

<i>Sl.No.</i>	<i>Bank Branch</i>	<i>Account No.</i>	<i>Amount of cash deposited</i>
<i>1.</i>	<i>DOP, Aliganj SO</i>	<i>0724848371</i>	<i>24 lac</i>
<i>2.</i>	<i>DOP, Aliganj SO</i>	<i>3428326615</i>	<i>22.02 lac</i>
<i>3.</i>	<i>DOP, Aliganj SO</i>	<i>3413187177</i>	<i>26 lac</i>

*The ITO-3(2) was informed about the source of cash deposited in above noted accounts vide letter dated 02-09-2019.*

4. *Because the ITO-3(2) again sent the notice under sub section (1) of section 142 under IT Act 1961 dated 23-09-2019 received on 26-09-2019. In this letter the ITO-3(2) has asked to furnish reply on or before 24-09-2019 even when this letter was posted on 25-09-2019. The ITO-3(2) also mentioned that no explanation was furnished by the assessee to earlier notice dated 13-09-2019.*

*It was also mentioned that "It is to state further that in your bank account total credit entries are Rs.1,10,95,252 /- including cash of Rs.72,02,000 /- for FINANCIAL YEAR 2016 – 17 i.e., AY 2017-18 for which you have offered no explanation or reply."*

*The ITO-3(2) had varied the amount of cash deposited during demonetization from Rs.72.02 Lac (in earlier notices dated 26-08-2019 and 13-09-2019) to Rs.1,10,95,252 /- for the FY 2016-17 without giving account wise breakup of this increase. Moreover in the consolidated amount of Rs.1,10,95,252 /-, the cash component was stated to be 72.02 Lac.*

5. *Because appellant has in her response dated 03-03-2018 and 02-09-2019, has mentioned that her annual taxable income during the FY 2016-17 has not exceeded the income tax exemption limit of 2.5 Lac as such no ITR was required to be filed by her. The source of cash deposited during the period of demonetization has been duly explained in her reply dated 02-09-2019.*
6. *Because information about distribution of amount of Rs.1,10,95,252/- has been indicated account wise, for the first time in AO only. In all earlier notices the ITO-3(2), had only indicated account wise breakup of only Rs.72.02 Lac which has been duly explained in the response dated 02-09-2019. The appellant had been kept in the dark about the account wise credit figures involving the sum of Rs.1.10.95.252/-.*

7. *Because the figure of 72.22 Lac has been disclosed for the first time in the chart available in para 3 of AO. The earlier notices had only mentioned the amount as 72.02 Lac. The response of appellant dated 03-03-2018 and 02-09-2019 have also been cited and their content has also been reproduced in paras 5 and 6 of the AO correctly. The assessee has correctly explained the source of cash deposited in all the three accounts in question. vide her response dated 02-09-2019.*
8. *Because ITO-3(2) has taken on record the response from the appellant but nowhere contested the claim of appellant.*
9. *Because the amount of further credits / deposits (the amount of difference between Rs.1,10,95.252 /- and Rs.70.02 Lac) covering the financial year 2016-17 have been transferred to appellant account as gift in cash, by appellant's father, who retired after rendering 37 years as Group A in Government service on 31-12-2015. The retirement benefits amounting to Rs 1.41 Crores (Rs. 1.27 Crore as GPF balance + 13.3 Lac as Leave encashment) were received by him during the year 2016. A portion of said amount has been credited into the said three accounts during the FY 2016-17. These amounts were transferred either before the period of demonetization or thereafter. Two of these accounts are joint accounts having my parent as other partner. The ITO-3(2) has not considered the fact that amounts received as gift in cash from parents and close relatives are exempt from income tax and they do not constitute income in the hands of assessee.*
10. *Because the First Appellate Authority has nowhere in the Impugned order discussed about the veracity of the transfer of amount of cash from the bank account in the name of her father to her own accounts as highlighted in the written submission dated 08-11-2019, even though the then CIT(A) - I Lucknow while forwarding the said written submission to the ITO(3)-2 under No. F.No. CIT(A)-I/LKO/Neha Singh/2019-20 dated 27-11-2019 had opined as here under:*

*I have considered the matter, in view of the submission of appellant and these documents furnished by appellant are relevant to decide the appeal."*

11. *Because after taking up indiscrete investigation / verification into the case, the LJAo has not found anything adverse among the claims made by this appellant in the First Appeal as well as written submissions made during the course of hearing of First Appeal.*
12. *Because the CIT(A) has nowhere discussed about the admissibility or otherwise of the evidence and submissions made by the appellant in the First Appeal as well as the written submissions made by the appellant during the course of hearing of First Appeal. The CIT(A) in the impugned order has nowhere disclosed the nature and details of additional evidence, if any, required by him that could be construed as 'plausible explanation' from the side of the appellant.*
13. *Because the Assessment Order has been passed by the ITO (3)-2 on 01-10-2019, whereas the National Faceless Assessment Scheme 2019 has been implemented by the Government with effect from 12-09-2019, and the Assessment officers were supposed to follow the prescribed procedure of communicating the Assessment Orders to the National Faceless Assessment Center for further necessary action in accordance with instructions contained in para sub para (2) of para 4 of CBDT Notification No. 61/2019/F.No. 370149/154/2019-TPL dated 12th September, 2019.*
14. *Because the Draft Assessment order has never been supplied to the appellant by the LAO before passing the final Assessment order dated 01-10-2019.*
15. *Because the appellant has never been a tax payer in the past, since her annual taxable income has never exceeded the income tax exemption limit and was not required to maintaining any Books of Accounts in respect of items of gifts received in cash from parents and close relatives. Moreover the share of*

*ownership of appellant in respect of joint S.B. accounts has incorrectly been assessed as full instead of proportionate of the balances standing in the joint accounts concerned.*

*The appellant has offered reasonable explanation about the source of acquisition of money. The responses submitted by the appellant from time to time including the written submission during the course of hearing of First Appeal, have clearly and correctly explained the source of acquisition of money concerned.*

- 16. Because the CIT(A) has agreed with the submissions made in the first appeal are related to the 'addition made of Rs.1.10 Crs. the contention of CIT(A), 'the same are not adjudicated at this stage' are self contradictory.*
- 17. While the CIT(A) has mentioned in the impugned order, 'It has been explained by the appellant that the cash deposits are on account of cash gifts from parents and the same are exempt', the contention of CIT(A), 'The burden of proof was on appellant after it was established by the revenue that cash deposits were made in bank account of the appellant. The same remains undischarged as of today for want of reasonable explanation and evidence. Thus, in view of absence of any plausible explanation from the side of the appellant, ground of appeals are dismissed.', is not a reasoned decision, since during the course of Hearing of First Appeal this appellant was never asked to produce any additional evidence / document which could be construed as plausible explanation by him.*
- 18. Because the action of First Appellate Authority is in gross violation of the provisions of Section 250(6) of Income Tax Act. The decision of CIT(A) is unreasoned and the same is therefore against the principle of Natural Justice, on account of denial of opportunity of adequate hearing to this appellant."*

In addition, the assessee has also filed Stay Application vide SA No.06/Lkw/2024 requesting for stay of demand.

(C) On perusal of records it is seen that the Assessing Officer issued show cause notice u/s 144 of the IT Act to the assessee on 06/06/2019 wherein date of compliance was fixed for 17/06/2019. The assessee submitted response to the aforesaid show cause notice. Thereafter a notice u/s 142(1) was issued by the Assessing Officer on 13/09/2019 which was served upon the assessee along with a detailed questionnaire. The date of compliance was fixed on 18/09/2019; thus, giving the assessee only four days (intervening period between 13/09/2019 and 18/09/2019) for compliance of detailed questionnaire. Thereafter another notice u/s 142(1) along with show cause notice was issued on 23/09/2019 fixing date of compliance on 24/09/2019 (i.e. on the very next day).

(C.1) At the time of hearing before us, representatives of both sides, the learned Sr. Departmental Representative for Revenue as well as the learned Authorised Representative for the assessee were in agreement that the Assessing Officer did not provide reasonable and effective opportunity to the assessee for compliance of notices dated 13/09/2019 and 23/09/2019. They were also in agreement that the issues in dispute in the present appeal may be restored to the file of the Assessing Officer with the direction to pass fresh assessment order in accordance with law after providing reasonable and effective opportunity to the assessee.

(D) In view of the foregoing, the aforesaid impugned appellate order dated 04/01/2024 of learned CIT(A) is set aside and all the issues in dispute in the present appeal before us are restored to the file of the Assessing Officer with the direction to pass de novo assessment order in accordance

with law after providing reasonable and effective opportunity to the assessee. All the grounds of appeal are treated as disposed of in accordance with these directions.

(E) The aforesaid Stay Application No.06/Lkw/2024 connected with appeal vide I.T.A. No.23/Lkw/2024 of the assessee becomes infructuous because the assessee's appeal has been decided for which attention is drawn to foregoing paragraph (D) of this order. Therefore, the said Stay Application filed by the assessee is dismissed being infructuous.

(F) In the result, the appeal is partly allowed for statistical purposes and the Stay Application is dismissed as infructuous.

(Order pronounced in the open court on 18/06/2024)

**Sd/.**  
**(SUBHASH MALGURIA)**  
**Judicial Member**

**Sd/.**  
**(ANADEE NATH MISSHRA)**  
**Accountant Member**

Dated:18/06/2024  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
  
4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar