

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.135/Asr/2024
Assessment Year: 2012-13**

Taraq Ahmad Goni, Bhadarwah Doda, Jammu & Kashmir. [PAN:ABMPG4756G] (Appellant)	Vs.	ITO, Ward-2 (4), Udhampur. (Respondent)
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Appellant by	Sh. Rattan Lal Gupta, Adv.
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	01.07.2024
Date of Pronouncement	29.08.2024

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Ld. JCIT (A) – 6, Kolkata, passed u/s 250 of the Act 61, dated 24/01/2024, which has emanated from the order of the ITO Ward 2(4), Udhampur, dated 04/11/2019, passed u/s 144/ 147 of the Act 61.

2. The grounds of appeal preferred by the assessee are as follows:

“1 That the Worthy Commissioner of Income Tax (Appeals) Addl/JCIT (A)-6 Kolkata and Ld. Income Tax Officer Ward 2(4) Udhampur have erred in law, facts and circumstances of the

case. In any case they have not applied their mind to the actual facts, legal propositions and circumstances of the case

2 *That the Worthy Commissioner of Income Tax (Appeals) has erred in upholding the assessed income of RS. 1389000.00 assessed by the Ld. ITO treating the cash sale proceeds of the appellant deposits in bank as unexplained money u/s 69 (A) of the ITACT 18961, arbitrarily, illegally and without any justification although the bank manager had explained the cast deposits as sale proceeds of the appellant in his bank statement submitted to the ITO. No notice u/s 148 or 142(1) of the IT ACT 1961, was received by the appellant.*

3 *That the Worthy Commissioner of Income Tax (Appeals) has erred in not considering the Income Tax Return of the Appellant of the relevant assessment year before e-filing of first appeal on 07.01.2020 declaring therein the actual and true income of the appellant.*

4 *That the Worthy Commissioner of Income Tax (Appeals) and Income tax officer Ward 2(4) Udhampur have erred in ignoring the written explanation of bank manager regarding the cash deposits of RS.1389000.00 made in the bank as sale proceeds of the appellant, arbitrarily, illegally and without any justification and thus imposed income tax amounting to RS 269551.00 by treating the genuine cash deposits RS. 1389000.00 as unexplained money u/s 69 (A) of IT ACT 1961*

5 *That the Worthy Commissioner of Income Tax (Appeals) has erred in upholding the interests u/s 234(A) Rs. 234552.00*

and u/s 234(B) RS.248032.00 imposed by the Ld. ITO arbitrarily, illegally and without any justification.

6 That the entire assessment order made by the Ld. ITO and upheld by the Worthy CIT (A) is merely based on conjectures and surmises. There is absolutely no justification in assessing the appellant at an income of RS. 1389000.00 treating cash sale proceeds deposited in the bank as unexplained money though explained by the bank manager in his bank statements submitted to the worthy CIT(A) and Ld. ITO.

7 That the appellant craves leave to add or amend any ground of appeal.”

3. All the grounds of appeal taken by the assessee, relates to one single issue, relating to the addition of Rs.13,89,000/-, made by the AO on account of unexplained cash deposits in savings bank account No 1656, with JCCB, (Jammu Central cooperative bank), Bhaderwah, by the assessee during the FY 2011-12.

4. The facts of this case are that, on gathering information from bank, regarding cash deposit made by assessee, the AO initiated proceedings u/s 147 of the Act 61, because no regular return was available on record. Notice u/s 148 dated 25/03/2019, has been returned by postal authorities with postal remarks “*refused*”. Subsequent notices issued u/s 142(1) was also returned with postal remark as “*refused*”. From the order of the AO it is seen that the final SCN sent through speed post has been served, but no compliance made by assessee. Ultimately the

assessment was completed u/s 144 on total income of Rs. 13,89,000/-, treating the cash deposit as unexplained u/s 69A of the Act 61.

5. The matter went before the first appellate authority, and the appellant has filed response in online portal, explaining the fact that the assessee is a senior citizen of 75 years and a book shop and stationery shop owner, under the name and style of "*Goni Book Depot*" located at Bhaderwah. He further explained in his submission that he and his wife, both were under medical treatment for kidney failure and knee joint problems at Khyber Institute, Srinagar.

5.1 From the submission it is further gathered that the book shop business was run by his relative during the year, and the daily sale proceeds of the business were deposited in the bank account and as per the computation of income filed before the first appellate authority, the total sale proceeds of the assessee was disclosed at Rs. 18 lakhs for the FY and the same covered the total of bank deposits. However, the first appellate authority refused to accept the figures contained in the computation of income in absence of any documentary evidence and in absence of any return being submitted neither in normal course nor in response to notice u/s 148 of the Act 61, and as a result the appeal was dismissed.

6. Now the assessee is before the tribunal against the said order on the various grounds contained in form 36, but all grounds are interlinked and relates to one single issue of addition of Rs. 13,89,000/-.

6.1 Before us the assessee has filed a short paper book containing 37 pages, and the Ld. AR argued that a return of income has been furnished on 7th January, 2020 in ITR-4S, (which is after the date of assessment order passed on 4th November, 2019) and as such the same is invalid. He submitted that the assessee is a State Government pension holder and documents regarding proof of business such as municipal shop license , evidencing the running of stationery and book shop, certificate from Jammu Central Cooperative bank , certifying that sale proceeds of Goni Book Shop are deposited in the said savings account, bank statement of the assessee in Jammu Central Co Op bank A/c 1656 , computation of income as on March 2012, copies of submission filed before first appellate authority, and assessment records of earlier years , medical papers of hospital regarding treatment undergone by spouse of assessee , are all contained in the paper book filed .

7. The Ld. AR referred to the computation of income to argue that the total sales for the year is disclosed at Rs.18 lakhs from the book shop business and Net profit is disclosed at Rs.1,44,000/- (@ 8% of Gross) which should be accepted and the total turnover disclosed covers the bank deposits of Rs.13.89 lakhs , apart from the pension income of Rs.1,78,106/-, and as such the addition u/s 69A made by the AO is legally invalid and the cash deposit is explained to have come out of book shop business and he prays that the addition u/s 69A may be deleted.

8. The Ld. DR, relied on the order of the first appellate authority, and argued that all the documentary evidences submitted by the assessee in the paper book, has never been submitted before the AO, because there has not been any compliance at assessment stage, and before the first appellate authority, no remand report has been obtained and as such there is violation of Rule 46A of the Rules 62, and the AO should get opportunity to verify fresh evidence. The Ld. DR further referred to page 4 to 14 of the paper book, containing the full bank statement of the assessee A/c No 1656, and argued that, total cash deposits in bank, even if explained to have come out of books shop sales, the profit disclosed at Rs.1,44,000/- is not acceptable, due to the fact that all deposits in the bank account are in cash and all withdrawals are through cheques, and the opening bank balance is Rs. 11,00,099/- and closing balance as on March is Rs.15,85,025/-, and the excess bank balance of Rs. 4,84,920/- is not covered by the disclosed profit of Rs. 1,44,000/-, and as such the income from book shop should be at least determined at Rs.4,84,920/-.

9. We have heard the rival submissions and considered all materials on record and the contents of the paper-book filed by the assessee. We are of the opinion that taking into account the medical issues of the assessee and his spouse, it was not practically possible for the assessee to appear and represent before the ITO in course of assessment proceedings, and it is rightly pointed out by the Ld. DR that

documents contained in the paper book, were never examined by the AO at any stage, and as per rules, he should get an opportunity to examine the same.

9.1 As such in the interest of justice we consider it appropriate to set aside the matter to the files of the AO, for *denovo* fresh assessment, after considering all papers and documents, bank statements, computation, including books of accounts, if any, filed by the assessee, in support of his contention and explanations, as per provisions of law, after allowing proper opportunity of being heard to the assessee.

10. Since we have set aside the matter back to the AO, we have not expressed any opinion on merits of the case.

11. In the result, the appeal of the assessee bearing **ITA No. 135/Asr/2024** is allowed for statistical purposes.

Order pronounced in the open court on 29.08.2024

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order