

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH “SMC”, ALLAHABAD**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.67/Alld/2024
A.Y. 2017-18

Manjushree Dubey 107, Badshahi Mandi, Allahabad Uttar Pradesh-211001 PAN AGYPD1788Q	Vs .	ITO-1(3) Allahabad, Uttar Pradesh- 211001
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri A.K. Singh. Senior D.R.
Date of hearing	07/08/2024
Date of pronouncement	30/08/2024

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal against order of the Ld. Joint Commissioner of Income Tax (Appeals) [hereinafter “the Ld. JCIT(A)”] u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”) dated 23/02/2024, which in turn had been passed in respect of appeal filed by the assessee from the order of ITO-1(3), Allahabad dated 07/12/2019. The grounds of appeal are as under: -

“Ground of Appeal

1. Because Leaned A.O make the addition of assessee saving amount of Rs. 2,14,500/- as un explain money. This saving

amount of Rs. 1,54,500/- had been deposited in Account No. 50160014000558 with Bandhan Bank Ltd. Cooper Road, Allahabad on 05/12/2016 and Rs 60,000/- was deposited in cash on 30.03.2017 in account no. 20437099583 in Allahabad Bank, Alopibagh, Allahabad. This Addition Bad in Law as well as Circumstances of facts.

2. Because Leaned A.O make the addition without considering the Past Income Tax Return, Assessee Regularly filing the Income Tax Return Last ten Assessment years prior to Assessment year 2017-18. It's very oblivious to Assessee hold the Saving Rs. 2,14,500/ which is from her Business Income. So the Addition of Rs. 2,14,500/- is not legally correct as well as question of facts. This small amount of saving of Rs 2,14,500 as addition un explained Income which is against the Principle of Natural Justice.

3. Because learned CIT (Appeal) Faceless dismiss the Appeal on ground that proper reply has not been submitted. On Account of Face Less Appeal Assessee could not up load explanatory statement timely and unable to understand which type of Documents required for the small amount of saving There are 12 points raised in the notice by commissioner appeal. Some points already complied like Form 35 Copy of Challan and Ground of Appeal assessee. Few of the points raised in notice which are not applicable. Assessee already stated the amount of Rs.2,14,500/- amount pertains to past saving but learned CIT(Appeal) could not stated in Notice which type of Documentary evidence required regarding such small savings. (Copy of CIT Appeal notice is Enclosed herewith)Further if any documentary evidence available it will be produced at time hearing,

4. The Cash flow statement on the basis of Last three years Income Tax Return a 2014-15, A.Y.2015-16 and A.Y 2016-17. Which is self explanatory assessee hold the Cash amount of Rs.2,14,500/- as own saving and duly deposited in aforesaid bank.(Flow Statement and Copy of ITR last three years are enclosed herewith)

2. The brief facts of the case are that the assessee filed return of income on 22/12/2017 showing total income of Rs.3,54,250/-. The case was selected for scrutiny on the issue, "Cash deposit during the year". The Assessing Officer ("AO") observed that

during the year under consideration, the assessee was commission agent of Dainik Jagran Newspaper, Magazine and earned commission income from purchase and sale of the said newspapers. She was asked to explain the source of cash deposited during the year. She explained that the cash deposited in banks were from sale proceeds and related to her business. The AO records that during the course of assessment proceedings, the assessee had produced cash book and vouchers, which were examined on test check basis. And he found that the cash deposited in Union Bank of India and Central Bank of India was on account of sales proceeds of her business. Therefore, he did not take any adverse inference with regard to the same. However, with regard to the saving bank A/c 50160014000558 with Bandhan Bank Ltd, Cooper Road, Allahabad in which cash amounting to Rs.1,54,500/- on 05/12/2016 and PPF A/c no. 20437099583 at Allahabad Bank, Alopibagh, Allahabad in which the assessee had deposited Rs.60,000/- on 30/03/2017, he records that the assessee did not submit any explanation regarding the "*Nature and source of the deposits.*" Therefore, he treated the said deposits as unexplained money u/s 69A of the

Act and added the same to the total income of the assessee and brought to tax u/s 115BBE of the Act.

3. Aggrieved with this addition, the assessee went in appeal to the CIT(A), Allahabad on 06/01/2022. The appeal was subsequently migrated to the NFAC. In the statement of the facts as given in Form No. 35, the assessee pointed out that she used to save money every year and kept it with her for any emergency so that she did not ask to anyone at the time of necessity but at the time of demonetization, she had deposited these past savings in the bank. It was submitted that the amount of Rs.1,54,000/- was deposited in account at Bandhan Bank Ltd and Rs.60,000/- was deposited in her PPF account, which were her total past savings and had nothing to do with the commission work of Dainik Jagran. She submitted that during the course of assessment proceedings, she was never asked about this amount and therefore she did not submit any reply to the AO during the assessment proceedings. It was submitted that the claiming of her past savings as "*other income*" was wrong and she prayed for relief from injustice. The Ld. JCIT records that he issued notices u/s

250 of the Act but the appellant did not file any submission on the merits of the case. Therefore, he disposed off the appeal on the basis of the material available on record holding that the assessee has not given any response to the Assessing Officer relating to the "*Source of cash deposit*" and therefore had not discharged the onus to explain the money deposit in the bank account. In view of her lack of response during the appellate proceedings, he dismissed the appeal.

5. The assessee is aggrieved at this dismissal and is accordingly in appeal before us. The case was called out for hearing on 07/08/2024 in which nobody appeared on behalf of the assessee. However, on going through the facts of the case it appears that the assessee has submitted before the Ld. JCIT that the only reason that she could not submit the details regarding the disputed amount of Rs.2,14,500/-, was that she was never asked to submit any details with regard to the same. A statement has been filed along with the appeal memo in Form No. 36, showing that she had made a total withdrawal from her business of Rs.5,34,000/-, of which Rs.3,19,500/- had been spent by her

as personal expenses, leaving own savings in cash of Rs.2,14,500/- which had been deposited by her during demonetization. It was also submitted in grounds of appeal that she was handicapped in timely submission of her explanatory statement and unable to understand which type of documentary evidence she was required to file for such a small savings. She filed a copy of the notice issued by Ld. JCIT to demonstrate this fact and pointed out that she had already filed Form No.35, Copy of challan and grounds of appeal. On consideration of these arguments, it is observed that the notice issued by Ld. JCIT(A) is a generic notice which requires compliance on a variety of points which may not have been necessary for decision of the assessee's appeal. The assessee had already filed Form No. 35, Statement of the facts, Grounds of appeal and Assessment order under appeal at the time of filing the appeal and it does not stand to reason to request that she refile the same at the time of hearing. Since the assessee had already submitted her explanation, in the statement of facts to Form No. 35, the Ld. JCIT should simply have proceeded to examine the appeal on the plausibility of the assessee's claim. Be that as it may, it appears that the cash-flow

statement which has been filed before us, was not available before the Ld. JCIT(A) at the time of her decision. In the interest of justice, we therefore, deem it fit to restore the matter back to the file of Ld. JCIT(A), so that, she may have occasion to go through this cash-flow statement and decide the appeal of the assessee with reference to the same and any other documentary evidence that the assessee may produce in support of the same.

6. As we are restoring the matter back to the file of the Ld. JCIT(A), the appeal of the assessee is deemed to be allowed for statistical purposes.

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

(Order pronounced in the open court on 30/08/2024)

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(NIKHIL CHOUDHARY)
ACCOUNTANT MEMBER

Dtd.30/08/2024
Vijay Pal Singh, (Sr. PS)

Copy of order forwarded to:

- | | |
|--------------------------|--|
| <i>(1) The appellant</i> | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i> | <i>(4) Departmental Representative</i> |
| <i>(5) Guard File</i> | |

By order

// True Copy//

Assistant Registrar