

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH "SMC", ALLAHABAD**

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

ITA No.68/Alld/2024
A.Y. 2017-18

Ram Krishna Shukla Sheikhpur, Derwa, Kunda, Pratapgarh, UP-230128 PAN BLAPS0128R	Vs .	JCIT(A) Patna, Bihar
(Appellant)		(Respondent)

Appellant by	CA Mislauddin
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 filed against order of the Ld. Joint Commissioner of Income Tax (Appeals) [hereinafter "the Ld. JCIT(A)"], Patna u/s 250 of the Income Tax Act, 1961 (hereinafter "the Act") dated 20/02/2024, in respect of appeal filed by the assessee against the order of the ITO, Pratapgarh, dated 29/11/2019. The grounds of appeal are as under: -

"Ground no.1 The order of the assessing officer is erroneous on the facts. On the facts and in the circumstances of the case he ought to have accepted the arguments of the assessee regarding agriculture income.

2 The learned assessing officer is not justified in treating the amount deposited as an agriculture income whereas no any

other income of source of the assessee and sufficient evidence regarding expenses as much as available submitted before him.

3. On the facts and in the circumstances of the case he has failed to appreciate the prevailing circumstances in the agriculture transaction in the village area.

4. On the facts and in the circumstances of the case, he ought not have completed the assessment hastily.

5. Any other ground or grounds as may be urged at the time of hearing.”

2. The brief facts of the case are that since the assessee failed to file of return of income u/s 139, the Assessing Officer (“AO”) issued a notice u/s 142(1) of the Income Tax Act, 1961 requiring him to prepare correct return of income for the AY. 2017-18. However, the assessee did not file the return in response to this notice. The AO observed that the assessee had made cash deposits during the demonetization period, the details of which are as under: -

Name of Bank	A/c Number	Amount
i State Bank of India, Rajapur	31846589865	2,41,000/-
ii Baroda UP Gramin Bank, Jethwara	53600100010377	2,48,000/-
iii do, Sarai Indrawat	56890100000039	5,46,000/-
	Total	Rs.10,35,000/-

3. The AO called for statements from the respective banks and, after receiving the same, issued notices u/s 142(1) of the Act

asking the assessee to explain the nature and source of cash deposits of Rs.10,35,000/- made in the above mentioned accounts during demonetization and furnish supporting evidences of the same. In response, a written reply was received from the assessee, stating that he was a retired teacher having pension income and agricultural income. It was stated that the cash deposited during demonetization period related to re-deposit of amounts withdrawn from salary/pension and income earned from agriculture, as the assessee wanted to enter into a transaction of immovable property at the time, but the same could not materialize because of the demonetization and hence the re-deposits. It was further submitted that a sum of Rs.5,95,000/- had been withdrawn from account no.56890100000039 during April, 2016 to Oct, 2016 and, out of this a sum of Rs.5,46,000/- had been re-deposited. The AO was convinced with this reply and did not make any addition on this account. However, with respect to an amount of Rs.2,48,000/- deposited in account no. 53600100010377 maintained with Baroda UP Gramin Bank, Jethwara and Rs.2,41,000/- deposited

in account no. 31846589865 maintained with State Bank of India, Rajapur, Pratapgarh, the AO was not convinced with the reply of the assessee, wherein it was stated that the some amount was deposited by his son and daughter-in-law who were also government teachers and apart of the above, he had agricultural land from which he earned Rs.4 to 5 lacs in a year. In support of the same, the assessee furnished a copy of the khatauni, but the AO records that he failed to furnish the details of income earned and expenses incurred thereon. Therefore, he asked the assessee to show cause why the cash deposits, as above, totaling to Rs.4,89,000/- should not be treated as unexplained money, and in view of his belief that the assessee could not substantiate the claim with documentary evidences, he added back of Rs.4,89,000/- u/s 69A of the Act and brought the same to tax u/s115BBE of the Act.

4. Aggrieved with this addition, the assessee filed an appeal before the NFAC, which was subsequently transferred to the Ld. JCIT(A), Patna for decision.

5. Before the Ld. JCIT(A), in Form No. 35, it was submitted that the assessee was a villager who retired as government primary teacher on 31/03/2016 and was doing farming, in which he produced mustard, daal, wheat and other agriculture produce. He was not very much aware of income tax laws and rules and he did not file any income tax return, because he only had pension income of Rs.1,78,870/-, which was below taxable limit and agriculture income, which was exempt from tax. With regard to deposit of cash of Rs.10,35,000/- in his various banks, it was submitted that the sum of Rs.5,46,000/- had been made from withdrawals from the same account in which the deposit was made and the source of the earlier deposit was loans and provident fund credited to this account. With regard to additions made on account of deposits in Baroda UP Gramin Bank, Jethwara and State Bank of India, Rajapur, Pratapgarh, it was submitted that the source of cash deposits in these bank accounts was only sale realization of agriculture produces like mustard, daal urad, wheat etc. It was submitted that the Khatauni of agriculture land and expenses regarding purchase

receipts of khaad were produced before the AO, but he disagreed on it without any reasonable ground stating that the assessee had failed to provide the details of agriculture expenses and sales realization. It was submitted that farmer engaged in traditional farming did not keep proper books of account because all the transactions were made in cash. There were no invoices received from agriculture service provider, like for seeds purchased, irrigation, labour charges for weeding, cutting etc and agriculture produce were sold on cash basis to other farmers or family members. Only rough recordings have been kept in the rural regional language. Invoices regarding purchase have already been submitted before the AO. It was further for this reason that the assessee was not in a position to furnish documentary evidences. The Ld. JCIT(A), observed that the assessee has not replied to the various notices issued to him and therefore, relying upon the judgments of the Hon'ble Delhi High Court in the case of CIT v Gold Leaf Capital Corporation Ltd (ITA. No.798 of 2009) and Hon'ble Supreme Court in the case of New India Assurance Co.

Ltd v R. Srinivasan [Appeal (civil) 11439 of 1996], he dismissed the appeal of the assessee for want of prosecution.

6. The assessee is aggrieved at this summary dismissal of his appeal and is accordingly in appeal before us.

7. On the day of hearing, Shri Mislauddin (CA) appeared before us and argued the case. It was submitted that the assessee had produced all the documents that he could possibly produce but the AO had ignored them and made conditions of documentation that were unrealistic having regard to the source of the assessee's income. It was submitted that the matter may kindly be sent back to the AO with a direction to consider the plausibility of the assessee's claim with regard to the evidences submitted by him regarding land holdings etc. On the other hand, the Ld. DR, Shri A. K. Singh submitted that the assessee was a non-filer and had not produced evidences before the AO despite various opportunities. Therefore, the appeal deserves to be dismissed for failure to properly explain the deposit of cash.

8. We have duly considered the facts of the case and the arguments of both parties. We observe that the assessee had furnished proof of agricultural holdings to the AO, on which there was no findings by the lower authorities as to whether the agricultural lands represented in such khatauni were capable of yielding the amount of agricultural income that the assessee has claimed to have deposited in his bank accounts. We observe that the AO insisting on documentary evidences to prove the extent of agricultural income may not be feasible in rural economy where receipts and vouchers may not be available for expenses made in cash or earnings made in cash. We observe that there was no mandatory requirement for an assessee having only agricultural operations, to maintain books of account with regard to the same. It is observed that these facts were before the Ld. JCIT(A) and the Ld. JCIT(A) could have rendered a finding on the same, instead of merely dismissing the assessee's case for default. Accordingly, given the nature of the case, we deem it fit in the interests of justice to restore the matter back to the file of the Ld. JCIT(A) with a direction to consider the extent of land holding of the assessee

as reflected in the khatauni and determine whether the same was capable of yielding the kind of agricultural income that has been claimed by the assessee. Needless to say, the Ld. JCIT(A) would be free to cause further inquiry in the matter before arriving at a finding.

9. As we have set aside the case to the file of the Ld. JCIT for a fresh decision in accordance to law, the appeal of the assessee is deemed to be allowed for statistical purposes.

10. 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 forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

// True Copy//

By order

Assistant Registrar