



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.419/LKW/2024
Assessment Year: 2011-12

Gyanendra Pratap Srivastava Payagpur Bahraich	v.	The Income Tax Officer-II Bahraich
TAN/PAN:ATAPS3192C		
(Appellant)		(Respondent)

Appellant by:	Shri Devashish Mehrotra, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	17	09	2024
Date of pronouncement:	30	09	2024

ORDER

This appeal has been preferred by the assessee against the order dated 08.05.2024, passed by the Addl/JCIT(A)-5, Delhi for Assessment Year 2012-13.

2. The brief facts of the case are that the assessee filed his return of income on 09.01.2012 declaring a total income of Rs.11,01,130/-. As per information available with the Department, the assessee had deposited a sum of Rs.10,00,000/- in his bank account during the year under consideration. The Assessing Officer initiated proceedings under section 147 of the Income Tax Act, 1961 (hereinafter called 'the Act') by issuing notice under section 148 of the Act. The Assessing Officer finally completed the assessment under section 144 of the Act,

determining the total income of the assessee at Rs.21,01,130/- by making an addition of Rs.10,00,000/- on account of unexplained deposits.

3. Aggrieved, the assessee preferred an appeal before the First Appellate Authority. However, the appeal before the Addl/JCIT(A)-5, Delhi came to be dismissed for the reason of non-compliance.

4. Now, the assessee has approached this Tribunal challenging the dismissal of his appeal by the NFAC by raising the following grounds of appeal:

1. That the Ld. CIT(Appeals)/ Addl./JCIT(A)-5, Delhi has erred in law as well as on the facts and circumstances of the case in deciding the appeal filed by the appellant exparte.

2. That the order passed by the Ld. CIT(Appeals)/Addl./JCIT(A)- 5, Delhi is contrary to the principles of natural justice as no proper and reasonable opportunity was provided to the appellant which is contrary to the legal principles which renders the order passed as null and void.

3. That the entire assessment framed is void ab-initio and bad in law in as much as no valid notice u/s 148 of the I.T.Act, 1961 was served on the appellant which renders entire subsequent proceedings as void ab-initio.

4. That the Ld. CIT(Appeals)/ Addl./JCIT(A)-5, Delhi has failed to appreciate that during the course of assessment

proceedings and in response to notice u/s 148 of the I.T. Act, 1961 the appellant filed return of income on 22.11.2017 for which no cognizance was taken by the Assessing Officer while framing the assessment order.

5. That without prejudice to the above, the Ld. CIT(Appeals)/Addl./JCIT(A)-5, Delhi has not considered the evidence placed by the appellant on record during the course of assessment proceedings in respect of deposit of Rs.10,00,000/- made in the bank account and is wrong in confirming the addition u/s 68 of the I.T. Act, 1961.

6. That the provisions of Section 68 of the I.T. Act, 1961 are not applicable on the facts and circumstances in the case of appellant an in respect of deposit made in the bank account as the same is not a cash credit which has been incorporated in the books of account of appellant and therefore the addition made deserves to be deleted.

7. That the Ld. CIT(Appeals)/ Addl./JCIT(A)-5, Delhi has failed to appreciate in confirming the addition of Rs.10,00,000/- in respect of the deposit, inspite of the fact that during the course of assessment proceedings the appellant had filed evidence in support of the deposit made in the bank account showing the source thereof.

8. That the Ld. CIT(Appeals)/ Addl./JCIT(A)-5, Delhi has erred in law as well as on the facts and circumstances of the case in confirming the addition made by the Assessing Officer in the order passed u/s 143(3) of the I.T. Act, 1961, more particularly when the appellant had filed the return in response to notice u/s 148 and had also replied to the

queries raised by the Assessing Officer u/s 142(1) of the Act and submitted evidence in respect of the same.

5. The Ld. Authorized Representative for the assessee submitted that the orders passed by both the lower authorities had been passed ex-parte qua the assessee. He prayed that the file may be restored to the office of the Assessing Officer (AO).

6. The ld. Sr. D.R. opposed the prayer of the Ld. Authorized Representative for the assessee and submitted that the assessee had been non-compliant both - at the assessment as well as the First Appellate stage and, therefore, no further opportunity should be allowed to him.

7. Having heard both the parties and looking into the facts of the case, I deem it expedient to restore the file to the office of the AO for the purpose of adjudicating the issue on merits after affording proper opportunity to the Assessee in this regard. I also caution the Assessee to fully comply with the notices issued by the AO in the set aside proceedings failing which the AO shall be at complete liberty to frame the assessment in accordance with law even if it is ex-parte qua the Assessee.

8. In the final result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30/09/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:30/09/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar