



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.528/LKW/2024
Assessment Year: 2016-17

Ajai Pratap Singh Basadh Sanahi, Raebareli- 229001.	v.	Faceless Assessment Unit, Faceless Assessment Unit Uttar Pradesh-229001.
PAN:BJEPS4128M		
(Appellant)		(Respondent)

Appellant by:	Shri Akhilesh Pratap Singh, C.A.		
Respondent by:	Shri Manu Chaurasia, CIT(DR)		
Date of hearing:	25	11	2024
Date of pronouncement:	27	11	2024

ORDER

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) dated 24.07.2024 pertaining to the assessment year 2016-17. The assessee has raised the following grounds of appeal are as under: -

"You have to inform with the request that the Assessing Officer undoubtedly relied on Section 144 of the Income Tax Act 1961 to issue his Income Tax Order, But instead of the Best Judgment. It is completely clear from the order of the Assessing Officer that the taxpayer did not respond to any notice, which was the moral responsibility of the taxpayer, but the taxpayer is a teacher who has been filing his income tax return regularly since the financial year 2016-17 and assessment year 2017-18. Department has also issued notice to the Corporation Bank only once under Section 133 (6) of the Income Tax Act 1961. No response was given by the bank to that notice despite this, the Assessing Officer again did not issue any notice to the bank And based on the wrong data available with you Instead of the Best Judgement, a completely Wrong Judgement was issued.

The Assessing Officer did not send any evidence to prove the validity of his order and cash deposit in the account, based only on the information available with the department, unexpectedly imposed unnecessary income tax of Rs 3,68,18,458 on the taxpayer.

*The assessee has deposited Rs. 370,000 instead of Rs. 3,70,00,000 on 16.07.2015 during the FY 2015-16 which are also confirmed by bank statement sent in the previous appeal. But the department has dismissed the appeal without any verification of the document attached in the appeal. Now I have **attached confirmation by the bank** of the cash deposit amounted to Rs.370000 in account no. 560381004071575 (After merger with Corporation bank).*

So, I requested you to please consider the Grounds and passed an appropriate order, It will be your great mercy.”

2. Briefly stated, facts are that the case of the assessee was reopened on the basis of the cash deposited of Rs.3,70,00,000/- in the accounts held with Corporation bank during the financial year 2015-16. The Assessing Officer (“AO”) observed that the assessee had not filed return of income. Thereafter, the case of the assessee was re-opened as per the procedure u/s 148A of the Income Tax Act, 1961 (hereinafter “the Act”) was passed. And thereafter, a notice u/s 148 of the Act was issued to the assessee on 23.03.2023. Further, there was no response on behalf of the assessee, therefore, the AO passed an exparte order thereby made an addition of Rs.3,70,00,000/- in respect of cash deposit in the bank account of the assessee u/s 69A of the Act. Further, he made an addition of Rs.4,56,560/- in respect of salary income reflected in the 26AS statement. Aggrieved by this, the assessee preferred an appeal before the Ld. CIT(A) who also sustained the addition. Aggrieved against this, the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, the Ld. Counsel of the assessee submitted that the assessment was passed exparte to the assessee and the authorities below failed to verify the correct facts. He contended that it was categorically stated that he had deposited only Rs.3,70,000/-in the bank account but the AO has wrongly taken the figure of Rs.3,70,00,000/- as figure of Rs.3,70,000/-. He contended that the bank statement was duly enclosed and placed on record before the Ld. CIT(A). He

submitted had the lower authorities given meaningful opportunities to the assessee he would have explained the correct facts.

4. On the other hand, the Ld. Departmental Representative (“DR”) supported the orders of the lower authorities.

5. We have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below.

6. Before the Ld. CIT(A), it was stated by the assessee that the AO had given only one notice to the bank for verifying the correct facts and he grossly failed to carry out field inquiry to verify the correct facts. However, the contention of the assessee was not considered by the lower authorities. The relevant observation and decision of the Ld. CIT(A) in para no. 4 of his order is reproduced as under for the sake of clarity: -

“4. The appellant being an individual was statutorily required to file the Income Tax return for the relevant year, if its income exceeds maximum amount which is not chargeable to Income Tax Act. But it appears from the records that the appellant has not file his return of income for the AY 2016-17. After considering the appellants nature of business, source and genuineness of cash deposit made in the account of Corporation Bank and non-availability of appellants return of income the cash was reopened by the AO by invoking the provisions of section 148A of the IT Act and subsequently an order u/s 148A (d) was passed and then notice u/s 148 was rightly issued by the AO to the appellant. During the assessment proceedings the AO found that the appellant made cash deposit amounting to Rs.3,70,00,000/- in the account of the appellant held with Corporation Bank Ltd. the appellant was given ample opportunity of being heard to the appellant to explain his case but the appellant has not complied with the department. Due to non-availability of appellants return of income and the nature/source of the cash deposit of Rs.3,70,00,000/- was unexplained, the AO has rightly treated the same as income u/s 69A of the IT Act for the AY 2016-17 of the appellant.

In view of the above I find there is no infirmity in the order of the AO and hence appeal of the appellant is dismissed.”

7. From the aforesaid findings of the Ld. CIT(A), it is clear that no comment is offered about the contention of the assessee

that the assessee had only deposited a sum of Rs.3,70,000/- but not Rs.3,70,00,000/- as taken by the AO. It is the case of the assessee that by not verifying the correct facts from the bankers of the assessee caused serious prejudice to the assessee thereby the tax liability is illegally fastened on the assessee. It is also stated that the facts can be verified and the matter may be restored to the file of the AO. Having considered the material on record and the findings of the lower authorities, we are of the considered view that the AO ought to have verified the correct facts and more particularly the Ld. Authorized Representatives of the parties have prayed that the matter may be restored to the assessing authority for verifying the correct facts. We, therefore, set aside the impugned order and restore the assessment to the file of the AO who would verify the correct facts about the deposition of the cash by the assessee in his bank account. If, the AO finds the assessee had only deposited a sum of Rs.3,70,000/- in that event the AO would consider the deposition at Rs.3,70,000/- and make assessment accordingly. Needless to say that the AO would provide adequate opportunity to the assessee for explaining the source of such cash deposit. The grounds raised in the appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 27/11/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 27/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

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

By order

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Assistant Registrar