



**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.342/LKW/2023
Assessment Year: 2017-18

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| Pappu Sonkar 538/2/220, Tirveni Nagar, Sitapur road, near Devki hospital, Lucknow-226020. | v. | ITO-3(3) Lucknow New-226001. |
| PAN:CZCPS8771H | | |
| (Appellant) | | (Respondent) |

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|------------------------|--|----|------|
| Appellant by: | Shri Ashwani Jaiswal, C.A. | | |
| Respondent by: | Shri Sunil Kumar Rajwanshi, Addl. CIT(DR) | | |
| Date of hearing: | 10 | 12 | 2024 |
| Date of pronouncement: | 13 | 12 | 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 13.09.2023 pertaining to the assessment year 2017-18. The assessee has raised the following grounds of appeal: -

- “1. That the Income as calculated u/s 44AD as field before Learned Lower Court should have been accepted.*
- 2. That the appeal filed u/s 250 should have been accepted.*
- 3. Learned Lower Court erred in confirming the addition made in the order passed u/s 144 ignoring the facts submitted before Learned Lower Court.*
- 4. That the addition made is too excessive and arbitrary.*
- 5. That without sending notice on correct address the order passed u/s 144 by Learned AO was bad in law.*
- 6. That the order passed is against the merit, circumstances and legal aspects of the case.*

7. That the appellant seeks permission to modify and/or add any other ground or grounds of appeal as the circumstances of the case might require or justify.”

2. The facts giving rise to the present appeal are that the notice u/s 142(1) of the Income Tax Act, 1961 (hereinafter referred as “the Act”) was issued by the assessing authority on 13.03.2018 calling upon the assessee to furnish the correct return of income for the assessment year under the appeal. However, it is noticed that the assessee did not file the requisite return of income. It was further noticed that the assessee had made deposits in his bank account amounting to Rs.16,52,800/- in cash during the demonetization period. The Assessing Officer made inquiry from the bank of the assessee and it was reported that the total deposit during the year was found to Rs.3,03,18,775/- treating the same as unexplained cash deposits. The Assessing Officer made assessment u/s 144 of the Act thereby assessing the income at Rs.3,03,18,775/-. Aggrieved by this, the assessee preferred an appeal before the Ld. CIT(A) who also dismissed the appeal. Now, the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, the Ld. Counsel of the assessee submitted that no effective and meaningful opportunity was granted by the lower authorities. He further submitted that the assessee is engaged in the trading of Banana. The assessee has also filed the additional evidences to prove that the assessee was infact engaged in the business of trading of Banana. He further contended that during the proceedings before the lower authorities, the assessee could not furnish the receipts issued by the Krishi Utpadan Mandi Parishad, Lucknow. Further, he submitted that the entire case is based upon incorrect appreciation of facts. He further prayed that an opportunity may

be given to the assessee for effective representation before the lower authorities.

4. On the other hand, the Ld. Departmental Representative (“DR”) opposed the submissions and supported the orders of the authorities below. The Ld. DR submitted that the assessee has not filed return of income which has been pointed out by the Assessing Officer. Therefore, the claim of assessee regarding purchases is rightly disallowed. He submitted that the assessee grossly failed to prove veracity of purchases. He further contended that the assessee was required to discharge burden of proof casted on him which he grossly failed. He thus prayed to sustain the findings of AO.

5. We have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below. We find that the Ld. CIT(A) dismissed the appeal by observing as under: -

“5.4.1 It is an admitted fact that during the relevant previous year the appellant has deposited cash of Rs.2,64,48,800/- and other credits of Rs.27,69,975/- total amounting to Rs.3,03,18,775/- in the current account maintained with State Bank of India no 34951075813. During the course of assessment proceedings, in spite of several notices issued by the A.O. u/s. 142(1) of the I. T. Act, the appellant failed to explain the source of said cash deposits and other credits found credited in the appellant's said bank account to the satisfaction of the A.O. The assessment was therefore completed ex-parte u/s. 144 of the I. T. Act bringing to tax the entire amount of Rs.3,03,18,775/- u/s. 69A of the I. T. Act.

5.4.2 During the course of appellate proceedings, the appellant contended that he is a proprietor of a concern M/s. Pappu Fruit Company carrying out the business of commission agent/arhati of Banana sale and is not maintaining books of account and also return of income for the current A.Y. was not filed. With regard to the source of cash deposits in the bank account, the appellant has alleged that sale proceeds of banana sale received in cash was deposited in the bank account against which payments were made to suppliers for Purchase of banana.

5.4.3 The contentions raised by the appellant in the grounds of appeal and written submission made has been carefully perused and considered. The copy of bank statement provided by the appellant is also seen. It is noted from the copy of bank statement maintained with State Bank of India account no. 34951075813 that huge amount of cash was deposited almost on every day or in a gap of couple of days and equivalent amount has

been transferred on the same day i.e. on the date of cash deposits itself. Like on 7th April, 2016, cash amounting to Rs.3,40,000/- was deposited and on the same day Rs.3,40,595/- was transferred to account no. 0011146253669, on 8th April, 2016, cash amounting to Rs.3,60,000/- was deposited and on the same day Rs.3,60,000/- was transferred to account no. 0011146253669, on 11th April, 2016, cash amounting to Rs.9,35,000/- was deposited and on the same day Rs.9,35,000/- was transferred to account no. 0011146253669, on 12th April, 2016, cash amounting to Rs.2,25,100/- was deposited and on the same day Rs.2,25,000/- was transferred to account no. 0011146253669, on 13th April, 2016, cash amounting to Rs.2,51,500/- was deposited and on the same day Rs.2,51,659/- was transferred to account no. 0011146253669. This pattern of cash deposit and transfer of funds is seen during the entire relevant previous year.

5.4.4 Though it is contended by the appellant that the source of cash deposit is out of sale proceeds of banana, the appellant failed to provide any documentary evidence to establish the actual purchase and sale of banana. Considering the huge amount of alleged sale and purchase of banana on single day, it was required on the part of the appellant to explain in detail the modus operandi of his business activity. Since there is sale of banana against receipt of cash and purchase of banana by way of transfer of funds to the supplier, it was further required on the part of the appellant to provide copy of purchase and sale bills along with copies of bills for transportation/freight paid, loading/unloading charges, warehouse charges and other related expenses to show the actual purchase of banana and delivery of banana against sales. It was very much required on the part of the appellant to provide complete details of persons with name and address, PAN, GST no., etc. from whom huge amount of cash was said to have been received against sale of banana. This was very essential to prove the source of cash deposits. It was also required on the part of the appellant to give reasons for major sale of banana in cash and not by any other mode of payment like cheque, DD, online payment, etc.

5.4.5 In the written submission made the appellant has filed a copy of 'mandi license showing the appellant as wholesaler/agent. However this document, in no way Prove the source of impugned cash deposits. Merely because the appellant is Possessing mandi license, it does not prove the nature and quantum of business activities being carried out by the appellant during the relevant previous year. Also it does not prove the source of cash deposits. Even if it is presumed that the appellant is acting as a commission agent, it remained unexplained as to why the sale consideration is received by the appellant in cash and on the same date it is transferred out. Even in that case, the appellant has to establish with support of authentic documentary evidences the transaction between the purchaser and seller of banana with their identity, quantum of goods sold value of goods sold and commission earned. The appellant failed to provide any documentary evidence either at the time of assessment or even at the appellate stage.

5.4.6 It is further noted from the copy of bank statement that the entire amount of cash deposits and on some occasion even more than that amount is transferred to some other person shows that the value of purchase is more than the value of sale. Therefore no commission is earned by the appellant on the transaction of purchase and sale of banana, which cannot be the case.

5.4.7 The appellant has also filed a copy of statement giving payment details with date, name of the person with amount paid. However this

statement also do not by any stretch of imagination prove the source of cash deposits. The appellant has filed a copy of letters from New Hindustan Fruit Company and Bismillah Khan Commission Agency certifying that they have received payment from the appellant company against sale during the financial year 2016-17. However this mere confirmation by these two concerns, in the absence of any other necessary documentary evidences like copy of sale bill, transport details, etc. do not prove that these concerns have actually sold banana to the appellant which was sold by the appellant against receipt of cash.

5.4.8 It is also noted that in the written submission the appellant has clearly stated that he is not maintaining any books of accounts. Thus the appellant do not have any documentary evidences or record to show the genuineness of business activity being carried out by the appellant. Considering all these facts of this case, I am of the view that the cash deposits appearing in appellant's bank account is not related to any business of purchase and sale of banana or on account of appellant acting as agent in the mandi.

5.4.9 The case laws relied upon by the appellant are not applicable since the facts in those cases are distinguishable from the facts of the instant case. In this case, in the absence of any documentary evidences and books of accounts, the appellant failed to prove the existence and genuineness of business activity of purchase and sale of banana and hence the source of said cash deposits remained unexplained. In view of the above facts of the case and in law, I am of the considered view that the appellant failed to prove the source of impugned cash deposits made in the bank account of the appellant during the relevant previous year. The addition made by the A.O. is therefore upheld. This ground of appeal raised by the appellant is thus dismissed.”

6. In this case, undisputedly as per the finding of the authorities below there were cash deposited by the assessee and also payments made to various persons. The Ld. Counsel for the assessee, during the course of hearing drew our attention to the bank statement of the account held with State Bank of India in the name of M/s. Pappu Fruit Company the account which is in issue before us. It is stated by the assessee that he is the proprietor of a concern M/s. Pappu Fruit Company. The facts has been duly noted by the Ld. CIT(A). From the bank statement, it is transpired that there are both debit and credit entries. It is also noticed that the Ld. CIT(A) has noted that the fact that the assessee had filed certain letters from New Hindustan Fruit Company and Bismillah Khan Commission Agency confirming that they have received payment from the assessee. It is seen from the records that on this aspect whether these transactions

are related to the business activities or not no independent verification was made by the lower authorities. The lower authorities have considered the credit entries but did not consider the debit entries. Therefore, looking to the totality of the facts, it would be in the interest of justice and fitness of things to restore the assessment to AO for making assessment afresh. The assessee should be given an opportunity to represent his case before the Assessing Officer. The impugned order is hereby set aside. The assessment order is restored to the assessing authority for framing denovo assessment, after verifying the correctness of the claim about the payment and receipt of the amount by the assessee from and to third party. The grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 13/12/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 13/12/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

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

By order

// True Copy//

Assistant Registrar