

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.201/Lkw/2024
A.Y. 2016-17

Sudhir Shankar Halwasiya, Halwasiya Court, Hazratganj, Lucknow-226001	vs.	The ACIT-III, Pratyaksh Kar Bhawan, Lucknow-226001
PAN:AANPH9171L		
(Appellant)		(Respondent)

Assessee by:	Sh. Shubham Rastogi, C.A.
Revenue by:	Sh. Sunil Kumar Rajwanshi, Addl. CIT DR
Date of hearing:	29.08.2024
Date of pronouncement:	25.10.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal filed against the order of the Id. CIT(A), NFAC passed under section 250 of the Income Tax Act, 1961, on 3.11.2023, dismissing the appeal of the assessee, which was filed against the order passed by the ACIT-3, Lucknow under section 143(3) on 20.12.2018. The grounds of appeal preferred are as under:-

- "1. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in dismissing the appeal filed by the appellant in limine, ex-parte.*
- 2. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not affording proper opportunity to the appellant and deciding the appeal ex-parte contrary to the principles of natural justice i.e. audi alteram partem and, therefore, the order passed deserves to be set aside for this reason alone.*
- 3. That the Ld. CIT(A) has failed to consider the statement of facts and grounds of appeal filed by the appellant while deciding the appeal ex-parte,*

which renders the order passed as not tenable in law and, therefore, the same deserves to be set aside.

4. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not going through the merits of the case, details of which were filed in statement of facts and endorsing the order of the Assessing Officer based on surmises, conjectures and wishful thinking.

5. That the Ld. CIT(A) has erred in law and on facts and circumstances of the case in not considering the evidences filed before the Assessing Officer in respect of availability of cash in hands of the assessee which in turn were deposited in the bank account and has only endorsed the view of the Assessing Officer, which renders the order passed as not tenable in law and liable to be set aside.

6. That in any view of the matter, the CIT(A) has erred in law and on facts and circumstances of the case in confirming the addition of Rs.3,85,73,095/- made by the Assessing Officer in respect of deposits in the bank account by treating them as undisclosed income.

7. That the CIT(A) has wrongly observed that the appellant has no evidence or explanation to offer in respect of the addition made in the assessment order, which is the subject matter of appeal while deciding the appeal ex parte.

8. That the appellant craves leave to add, alter, amend or withdraw any or all grounds of appeal at any time before or during the course of the hearing.”

2. The appeal is filed late by nearly three months. The condonation petition has been filed by the assessee along with the affidavit, in which it was submitted that income tax matters of the assessee were being looked after by his accountant, Shri Anil Kumar Singh, who was suffering from a liver problem for the last several months (Hepatitis and Jaundice) and therefore, the assessee was not aware of the income tax appeal order. It was only after the recovery of Shri Anil Kumar Singh, that the income tax portal was checked and it came to the knowledge of the assessee, that the appeal had been decided ex parte. A copy of medical certificate of the doctor who was treating Shri. Anil Kumar Singh, was attached by way of proof. We have duly considered the reasons professed by the assessee, and we feel that in

view of the same, it is in the interest of justice to admit the appeal condoning the delay.

3. The facts of the case are that the assessee's case was selected for limited scrutiny on the following points:-

- i. Whether loans and advances were received were genuine and from disclosed sources.
- ii. Whether the deduction against income from other sources had been correctly shown in the return of income.
- iii. Whether the cash deposit had been made from disclosed sources.

4. The ld. AO observed that the total cash deposits of Rs.2,27,54,000/- had been deposited by the assessee in cash into his bank account with Dhanlaxmi Bank. He issued a notice under section 133(6) to Dhanlaxmi Bank seeking certain details. In response, the bank submitted, that out of the total cash deposit done, Rs. 1,71,00,000/- came from the sale of property and the rest amount as a result of business. The assessee was confronted with these facts. In response, the assessee denied that any properties had been sold during the year and submitted that all the cash deposits were out of the available cash surplus with the assessee, which was the carried forward balance as on 1.04.2015. In support thereof, the assessee submitted a copy of his ledger, in which cash in hand was reflected as Rs.3,94,23,225/-. The ld. AO noted that the ITR of the assessee for the assessment year 2016-17, showed the closing balance of cash in hand at only Rs.3,93,679/- and, as per the balance-sheet of S.S. Halwasiya and Co, the cash in hand was reflected at Rs.6,55,459/- only. He, therefore, asked the assessee to show cause, as to why the balance shown in the ledger, as cash in hand, may not be treated as is undisclosed income. In response, the assessee replied that the balance sheet shown in the income tax return, was only with reference to the business conducted by the assessee and was not the personal balance-sheet of the assessee. Hence, only the

details related to business were filled up in the electronic return. However, the ld. AO did not accept this argument of the assessee. He described schedule AL, and stated his opinion, that all the assets and liabilities were required to be shown in the same, other than those included in Part A-BS. The ld. AO conceded the fact that the assessee could maintain different books of accounts for his business and for his personal affairs, but he opined, that not showing the cash in any record submitted to the income tax department, was beyond any rational logic and definitely indicated undisclosed cash credit, which only came into the picture because of the annual information report and subsequent bank enquiries. He also asked the assessee to show his wealth tax return, from where it could be ascertained whether the cash in hand as on 31.03.2016, was duly disclosed, but the assessee had not filed the wealth tax return for the assessment year 2015-16. The assessee further submitted, that his case has been taken for scrutiny in previous assessment years and the ld. AO had examined this issue before, but the ld. AO, through an examination of the previous two years returns, observed that in assessment year 2015-16, there was no scrutiny assessment, while in assessment year 2014-15, the case was selected for limited scrutiny on account of large deduction claimed under section 57. The ld. AO therefore, observed that what ledgers or books were maintained at the assessee's home was nobody's business, but the closing balance of cash as on 31.03.2015, should be reflected in some document filed before the income tax department. If that were not the case, then the ledger could not be believed and accordingly, after allowing for the cash balance shown in the income tax returns of the assessee in assessment years 2015-16, he added back the remaining amount reflected in the ledger, of Rs. 3,85,73,095/-, to the income of the assessee, charged interest on the same and initiated penalty proceedings under section 271(1)(c).

5. Aggrieved with the said addition, the assessee filed an appeal before the ld. CIT(A), Lucknow on 23.01.2019. The case was subsequently migrated to the National Faceless Appeal Centre. The ld. CIT(A) reproduced the facts of the case as

narrated by the assessee in column 11 of Form 35, in his order. From the same, it was seen that the assessee had submitted a complete personal set of accounts for the F.Ys. 2014-15 and 2015-16 and extract of bank statements had been placed before the ld. AO and it had been explained, that the cash deposits which were made in the bank account ,were out of the available cash surplus with the appellant. The cash availability statement was also furnished to the ld. AO. It was further submitted that the majority of income of the appellant had been received through banking instruments. The nature of the income included rental income, income from salary and income by way of interest from private parties. Even the unsecured loans obtained by the assessee were also through banking instruments, the extracts of bank statements had been placed before the ld. AO and it had been duly explained, that cash deposits were out of available cash surplus, which in turn was on account of the withdrawal from the bank account on various occasions, which was duly verifiable from the bank statements available with the assessee. It was submitted that the failure to file the wealth tax return could not make the cash in hand as undisclosed, but rather one had to see the source of accumulated cash surplus. The appellant was a regular assessee before the Department and had been filing his return of income, wherein the various sources of income had been duly taxed and, it was from such income, that the appellant had created assets in the form of properties, investments, liquid assets, cash balances, bank balances etc,. Therefore, since the source through which the creation of assets had been done, had been duly disclosed before the Department, the cash surplus could not under any presumption, be treated as undisclosed. It was further submitted that the ld. AO had noted that the assessee had not filed the amount of personal cash in his ITR in either Schedule BS or in Schedule AL. In this context, it was submitted that the cash in hand as on 31.03.2016, as per the audited balance-sheet of his business amounting to Rs.3,93,679/-, was duly filled in the respective column of Schedule BS but as regards Schedule AL, since the assessee was not able to make the complete list of his assets

and liabilities on the date of the return, the schedule had not been filled. This could be regarded as a defect in the return and a notice under section 139(9) could have been issued by the Department on this account. However, once the incomes related to the assets were duly shown, this in itself, could not be the basis to treat the assets as undisclosed. All the supporting documents as well as the bank statement were available with the Id. AO, wherein each and every transaction with relation to cash deposit and cash withdrawn was duly verifiable. It was further submitted, that in his haste to make the addition, the Id. AO had added the opening balance of cash in hand as on 1.04.2015, to the income of the appellant, but that balance was nothing but the brought forward balance of the previous year and that had been worked out, on the basis of transactions relating to F.Y. 2014-15. Therefore, the addition made by the Id. AO under section 68, could not have been made in the assessment year in question, as the amount was not received by the assessee during the year in question, but only represented an opening balance. The Id. CIT(A) records that he issued seven notices to the assessee to represent the case before him, but the assessee did not represent his case. Therefore, he held that the assessee was not serious about pursuing his appeal and quoting from various judgments of the Hon'ble Supreme Court and the Hon'ble Madhya Pradesh High Court, he dismissed the appeal of the assessee. While doing so, he stated that he had gone through the grounds of appeal and statements of facts, but did not consider them to be of merit in view of the fact that they had not been substantiated or supported by any documentary evidence. He, therefore, concluded that the assessee had no explanation to offer and he dismissed the appeal as being without substance.

6. The assessee is aggrieved at this summary dismissal of his appeal and has accordingly come before us in appeal. Shri Devashish Mehrotra, Advocate appeared on behalf of the assessee and submitted, that the facts narrated in the statement of facts, were enough to require the Id. CIT(A) to call for a report from the Id. AO and

ascertain the facts of the assessee's case, before summarily dismissing the appeal. It was submitted that the matter may be sent back to the Id. CIT(A) for a decision on merit. The Id. CIT DR, Shri Ghayasuddin, pointed out that the Id. CIT(A) had given numerous opportunities to the assessee to explain his case, which the assessee had not availed. However, if the Tribunal in its' wisdom decided to send the matter back to the Id. CIT(A), for a decision on merits, then it should also direct the assessee to make due compliance before the Id. CIT(A) and observe that failure to make proper compliances, would entitle the authority to draw an adverse inference against the assessee.

7. We have duly considered the facts and circumstances of the case. We observe that the assessment has been triggered by a deposit of Rs.2,27,54,000/- in Dhanlaxmi Bank Limited. The assessee had sought to explain this as being made out of cash in hand of Rs.3,94,23,225/- in his ledger, as on 1.04.2015. The Id. AO disbelieved this ledger of the assessee, because it did not find expression in any of the returns or accounts filed before the income tax department in that year or in previous years. He, therefore, only allowed a deduction of Rs.8,15,131/-, which was the amount reflected in the returns of the assessee for the assessment year 2015-16 and he added back a sum of Rs.3,85,73,095/-. We observe that this stand of the Id. AO appears to be self-contradictory. If the Id. AO was not convinced with the figures reflected in the ledger produced by the assessee, then he could not make an addition on the basis of those figures, because in his opinion, those figures were non-existent. At best, he could have made an addition of the cash that was actually deposited by the assessee into his bank account. This ,by itself, shows an excess addition of nearly Rs.1.6 Crores by the Id. AO, a fact which ought to have been apparent to the Id. CIT(A), irrespective of whether the assessee represented the appeal before him or not. Furthermore, we observe that there was sufficient information contained in the statements of facts, which has been reproduced by the Id. CIT(A) in his order, to allow the Id. CIT(A) to call for a verification report from the Id. AO, before

proceeding to summarily dismiss the appeal. While we do not appreciate the failure of the assessee to appear before the Id. CIT(A), we feel that since the assessee had not withdrawn his appeal, the Id. CIT(A) could have attempted to go into the merits of the case rather than summarily dismissing it, for want of pursuit. After considering the facts of the case and the obvious shortcoming in the order of the Id. AO, we therefore, restore the matter back to the file of the Id. CIT(A), with a direction that he may afford an opportunity to the assessee and call for such verification report from the Id. AO as may be required, before deciding the issue on merits. We also direct the assessee to make due compliance, with all supporting documents before the Id. CIT(A) and before the Id. AO, as directed by the Id. CIT(A), so that the authorities below may arrive at the true facts of the case. We would also caution the assessee, that the failure to make due compliance before the Id. CIT(A) or during any remand proceedings that may be ordered by him, would be held adversely against the assessee. We, therefore, restore the matter back to the file of the Id. CIT(A) for a fresh order, after considering the issue on merits. In view of the fact that the matter has been restored back to the file of the Id. CIT(A), it is not necessary to decide each individual ground and the appeal of the assessee is deemed to be allowed for statistical purposes.

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

Order pronounced on 25.10.2024 at Allahabad, U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

DATED: 25/10/2024

Sh

Sd

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.