

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

BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

I.T.A. No.429/Lkw/2024
Assessment Year:2017-18

Kamlesh, H. No. DC-22, Ward No. 3, Mohan Nagar, Palwal, Faridabad. PAN:BTVPK5781R (Appellant)	Vs.	Income Tax Officer-4(2), Lucknow. (Respondent)
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Appellant by	Shri Dharmendra Kumar, C.A.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

(A) This appeal vide I.T.A. No.429/Lkw/2024 has been filed by the assessee for assessment year 2017-18 against impugned appellate order dated 27/02/2024 (DIN & Order No.ITBA/NFAC/S/250/2023-24/1061551892(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(A.1) In this case assessment order u/s 144 of the Income Tax Act ("I.T. Act" for short) was passed on 03/12/2019 whereby the assessee's total income was assessed at Rs.49,89,538/- (rounded off to Rs.49,89,540/-). In the aforesaid assessment order, additions amounting to Rs.22,25,000/- and

Rs.27,55,177/- were made u/s 69A of the I. T. Act. The aforesaid assessment order was passed ex-parte qua the assessee. The assessee's appeal against the aforesaid assessment order was dismissed by the learned CIT(A) vide order dated 27/02/2024. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 27/02/2024 of learned CIT(A). Grounds of appeal are as under:

- "1. *No notice was served on appellant, prior to passing of the assessment order, hence assessment order passed u/s 144 of the Act is illegal and without jurisdiction.*
2. *All notices, prior to 15-10-2019, including notice u/s 142(1) of the Act for filing of ITR, were issued at Lucknow address, whereas, appellant shifted to Haryana address in a.y.2009-10 and she specifically noted Haryana address in ITR filed for a.y.2016-17. Appellant came to know about assessment proceedings including passing of assessment order first time on 12-02-2020 from bank of appellant on issue of notice u/s 226 of the Act for bank account attachment. In the light of aforesaid facts, assessment order was passed without providing an opportunity, against the law of natural justice and without jurisdiction.*
3. *That appellant was engaged in trading of readymade garments, hence addition in total income, if any, should have been made the head "Income from Business and Profession" and not under section 69A of the Act. Accordingly, additions made u/s 69A of the Act read with section 115BBE of the Act are illegal and without jurisdiction*
4. *That appellant had enough cash with her so as to prove the sources of cash deposits in bank. Accordingly, addition of Rs.22,25,000/- in the total income of appellant is against the facts, illegal and without jurisdiction.*
5. *That sources of credit entries in bank were maturity proceeds of fixed deposits, interest from fixed deposits, LIC maturity proceeds and wrong entries passed by banks, which were later reversed by said banks, hence additions of Rs.27,55,177/- u/s*

69A of the Act read with section 115BBE of the Act is baseless, against the facts, illegal and without jurisdiction.

6. *That the appellant reserves right to modify and or add any other ground or grounds of appeal as the circumstances of the case might require or justify.*
7. *That the assessment upheld by Ld. Lower authority is highly excessive, contrary to facts and against the principles of natural justice and fair play.*
8. *That the assessment order upheld by Ld. Lower authority is arbitrary, bad in law and against equity, justice and good conscious and deserves to be cancelled."*

(A.2) In the course of appellate proceedings in Income Tax Appellate Tribunal, three separate paper books, containing the following details were filed from the assessee's side:

S.No	DOCUMENTS	1
1	Written submission and statement of facts	
2	List of Documents attach filed before Commissioner Appeal	
3	Submission filed before Commissioner appeal	
4	Computation of Income	
5	Copy of balance sheet for the f.y 2016-17	
6	Copy of balance sheet for the f.y 2015-16	
7	ITR-V for the A.y 2016-17	
8	Copy of PAN Mr RAM AVATAR TANWAR	
9	Confirmation Letter Mr RAM AVATAR TANWAR	
10	Copy of Ledger Mr RAM AVATAR TANWAR	
11	Copy of Salary Bank account Mr RAM AVATAR TANWAR	
12	Copy of Death Certificate Late Khemchand	
13	Copy of Ledger account Late Khemchand	
14	Copy of Bank account Mr Khemchand	
15	Copy of ICICI Bank account Mrs Kamlesh	
16	Copy of HDFC Bank account Mrs Kamlesh	
17	Copy of Cash Book for the f.y 2016-17	

S.No.	Document
1	Copy of Acknowledgement of e-Filing of Income Tax Appeal
2	Copy of Form No. 36
3	Copy of Challan
4	Copy of Order u/s 250 of Income Tax Act, 1961 (Commissioner of Income tax Appeal)
5	Copy of Statement of Facts and Written Submission before Honble ITAT A.Y.2017-18
6	Copy of Grounds of Appeal
7	Copy of Assessment Order A.y.2017-18
8	Copy of Form No.35
9	Copy of Written submission and Statement of Facts and Grounds of Appeal

S.No.	Document
1	Application for condonation of delay in filling of the appeal
2	Affidavit of Mrs. Kamlesh
3	Medical papers and documents of Mrs. Preeti, the daughter –in-law of the appellant
4	Submission for regarding defects in appeal
5	Copy of email send to jurisdictional AO for correction challan
6	Copy of Challan

(B) This appeal filed by the assessee is beyond the time limit prescribed u/s 253(3) of the I. T. Act. An application was filed by the assessee

requesting for condonation of delay in filing of the appeal. An affidavit was also filed by her in support of the request for condonation of delay in filing of this appeal. Giving detailed description of the family circumstances and other facts, which caused the delay in filing of the appeal, the assessee has submitted that reasons for late filing of the appeal were really beyond her control. The learned D.R. for Revenue expressed no objection to condonation of delay in filing of this appeal. In view of the foregoing, the delay in filing of this appeal is condoned and the appeal is admitted for decision on merits.

(C) On merits, at the time of hearing, the learned A.R. for the assessee submitted that no notice was served upon the assessee prior to passing of the assessment order. He further submitted that lack of compliance with the notices issued by the Assessing Officer during assessment proceedings was because no notice was served on the assessee. He also submitted that the issues in dispute regarding the aforesaid additions of Rs.22,25,000/- and Rs.27,55,177/- should be restored back to the file of the Assessing Officer with the direction to pass de novo assessment order in accordance with law after providing reasonable opportunity to the assessee. The learned D.R. for Revenue expressed no objection to the aforesaid submissions. In view of the foregoing and as representatives of both sides are in agreement on this, in the specific facts and circumstances of the present case, the impugned appellate order dated 27/02/2024 is set aside and the issues in dispute regarding the aforesaid additions of Rs.22,25,000/- and Rs.27,55,177/- made by the Assessing Officer u/s 69A of the I. T. Act are restored back to the file of the Assessing Officer with the direction to pass de novo assessment order in accordance with law after providing reasonable opportunity to the assessee.

(D) In the result, the appeal of the assessee is partly allowed for statistical purposes.

(The order was pronounced in the open court after conclusion of hearing. Now this detailed order is being passed in writing.)

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:31/12/2024
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT

4. D.R., I.T.A.T.,
5. CIT(A)

Assistant Registrar