

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
BEFORE SH. SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.42 & 43/Alld/2023
A.Ys. 2013-14 & 2014-15

Smt. Lakshmi Devi, C/o M/s Hari Om Jewellers, Chowk Bazar, Fatehpur, U.P.	vs.	DCIT, (CC), Allahabad
PAN:ARLPD2278D		
(Appellant)		(Respondent)

AND

ITA No.44/Alld/2023
A.Y. 2015-16

Smt. Lakshmi Devi, C/o M/s Hari Om Jewellers, Chowk Bazar, Fatehpur, U.P.	vs.	ACIT, (CC), Allahabad
PAN:ARLPD2278D		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Sh. Amalendu Nath Mishra, CIT, DR
Date of hearing:	21.11.2024
Date of pronouncement:	27.12.2024

ORDER

PER NIKHIL CHOUDHARY, A.M.:

These appeals have been filed against the orders of the ld. CIT(A)-3, Lucknow, under section 250 of the Income Tax Act, 1961, wherein the ld. CIT(A) vide his separate orders dated 6.03.2023, 6.03.2023 and 10.03.2023 has confirmed the addition made by the ld. AO on account of investment in pawning business. The grounds of appeal preferred by the assessee in the respective appeals are as under:-

Grounds of appeal for A.Y. 2013-14

- “1. That in any view of the matter order passed u/s 153A r.w.s.143 (3) of the act dated 16.04.2021 is bad both on the facts and in law and by such order income as determined at Rs.3,07,017/ is highly unjustified and action of two lower authorities is highly unjustified and is not correct.*
- 2. That in any view of the matter addition of Rs.1,15,827/- as made by the assessing officer by alleging undisclosed investment in pawning business by invoking the provision of section 69 is not correct at all as the business was old and earlier investment was re-invested during the year hence addition is unwarranted.*
- 3. That in any view of the matter in the course of search operation nominal pawned ornament found from the locker no.75 of HDFC bank and the said locker belong to other party and not to the appellant hence addition in the hands of the appellant is unwarranted.*
- 4. That in any view of the matter on the date of search the appellant was present but no statement of the appellant was recorded in respect of pawning business hence addition made by assessing officer and confirmed by CIT Appeal is highly objectionable.*
- 5. That in any view of the matter the basis of addition of Rs.1,15,827/- without any incriminating material and without any basis is not correct hence the addition made and maintained is not correct in the eyes of law.*
- 6. That in any view of the matter the search action is illegal and invalid as per the provision of section 153D of the Act as the approval from the Joint Commissioner was not properly taken rather the approval was obtained in mechanical manner hence assessment liable to be declared illegal.*
- 7. That in any view of the matter since no incriminating material was found and more so the assessment was concluded before the date of search hence the assessment not abated as such assessment liable to declared invalid.*
- 8. That in any view of the matter penal interest a charged u/s 234A and 234B is not correct at all because the delay in filling of the return was not on the part of the appellant and more so the added amount is not the income of the appellant in real sense hence charge of interest u/s 234B is not correct. Thus the interest charge under two different section is highly unjustified in the light of decision of various court.*
- 9. That in any view of the matter provision of section 115BBF as invoked by the assessing officer and confirmed by CIT Appeal is highly unjustified.*
- 10. That in any view of the matter the assessee reserve is right to take any fresh ground of appeal before the date of hearing.”*

Grounds of appeal for A.Y. 2014-15

"1. That in any view of the matter order passed u/s 153A r.w.s.143 (3) of the act dated 16.04.2021 is bad both on the facts and in law and by such order income as determined at Rs.3,90,000/- is highly unjustified and action of two lower authorities is highly unjustified and is not correct.

2. That in any view of the matter addition of Rs.3,90,000/- as made by the assessing officer by alleging undisclosed investment in pawning business by invoking the provision of section 69 is not correct at all as the business was old and earlier investment was re-invested during the year hence addition is unwarranted.

3. That in any view of the matter in the course of search operation nominal pawned ornament found from the locker no.75 of HDFC bank and the said locker belong to other party and not to the appellant hence addition in the hands of the appellant is unwarranted.

4. That in any view of the matter on the date of search the appellant was present but no statement of the appellant was recorded in respect of pawning business hence addition made by assessing officer and confirmed by CIT Appeal is highly objectionable.

5. That in any view of the matter the basis of addition of Rs.3,90,000/- without any incriminating material and without any basis is not correct hence the addition made and maintained is not correct in the eyes of law. That in any view of the matter the search action is illegal and invalid as per the provision of section 153D of the Act as the approval from the Joint Commissioner was not properly taken rather the approval was obtained in mechanical manner hence assessment liable to be declared illegal.

7. That in any view of the matter since no incriminating material was found and more so the assessment was concluded before the date of scarch hence the assessment not abated as such assessment liable to declared invalid.

8. That in any view of the matter penal interest a charged u/s 234A and 234B is not correct at all because the delay in filling of the return was not on the part of the appellant and more so the added amount is not the income of the appellant in real sense hence charge of interest u/s 234B is not correct. Thus the interest charge under two different section is highly unjustified in the light of decision of various court.

9. That in any view of the matter provision of section 115BBF as invoked by the assessing officer and confirmed by CIT Appeal is highly unjustified.

10. That in any view of the matter the assessee reserve is right to take any fresh ground of appeal before the date of hearing."

Grounds of appeal for A.Y. 2015-16

"1. That in any view of the matter order passed u/s 153A r.w.s.143 (3) of the act dated 16.04.2021 is bad both on the facts and in law and by such order income as determined

at Rs.4,60,050/- is highly unjustified and action of two lower authorities is highly unjustified and is not correct.

2. That in any view of the matter addition of Rs.2,39,000/- as made by the assessing officer by alleging undisclosed investment in pawning business by invoking the provision of section 69 is not correct at all as the business was old and earlier investment was re-invested during the year hence addition is unwarranted.

3. That in any view of the matter in the course of search operation nominal pawned ornament found from the locker no.75 of HDFC bank and the said locker belong to other party and not to the appellant hence addition in the hands of the appellant is unwarranted.

4. That in any view of the matter on the date of search the appellant was present but no statement of the appellant was recorded in respect of pawning business hence addition made by assessing officer and confirmed by CIT Appeal is highly objectionable.

5. That in any view of the matter the basis of addition of Rs.2,39,000/- without any incriminating material and without any basis is not correct hence the addition made and maintained is not correct in the eyes of law.

6. That in any view of the matter the search action is illegal and invalid as per the provision of section 153D of the Act as the approval from the Joint Commissioner was not properly taken rather the approval was obtained in mechanical manner hence assessment liable to be declared illegal.

7. That in any view of the matter since no incriminating material was found and more so the assessment was concluded before the date of search hence the assessment not abated as such assessment liable to declared invalid.

8. That in any view of the matter penal interest a charged u/s 234A and 234B is not correct at all because the delay in filling of the return was not on the part of the appellant and more so the added amount is not the income of the appellant in real sense hence charge of interest u/s 234B is not correct. Thus the interest charge under two different section is highly unjustified in the light of decision of various court.

9. That in any view of the matter provision of section 115BBF as invoked by the assessing officer and confirmed by CIT Appeal is highly unjustified.

10. That in any view of the matter the assessee reserve is right to take any fresh ground of appeal before the date of hearing."

2. Subsequently, the assessee also filed additional grounds of appeal and requested that the same may kindly be admitted as the same went to the root of the matter and had been left over by oversight. The additional grounds are as under:-

Addl Grounds of appeal for (A.Y. 2013-14)

- “1. That in any view of the matter in the course of search operation u/s 132 of the Act on 02.07.2018 no statements of the appellant was recorded by the search party u/s 132(4) specifically when the appellant was present in the house hence addition made and maintained by the two lower authorities are incorrect.
2. That in any view of the matter written submission filed before the CIT(A) on 28.02.2023 duly endorsed on the receipt counter but without granting personal hearing by CIT(A) decided the appeal on 06.03.2023 (within 6 days) without opportunity which is against the principal of natural justice.”

Addl Grounds of appeal for (A.Y. 2014-15)

- “1. That in any view of the matter in the course of search operation u/s 132 of the Act on 02.07.2018 no statements of the appellant was recorded by the search party u/s 132(4) specifically when the appellant was present in the house hence addition made and maintained by the two lower authorities are incorrect.
2. That in any view of the matter written submission filed before the CIT(A) on 28.02.2023 duly endorsed on the receipt counter but without granting personal hearing by CIT(A) decided the appeal on 06.03.2023 (within 6 days) without opportunity which is against the principal of natural justice.”

Addl Grounds of appeal for (A.Y. 2015-16)

- “1. That in any view of the matter in the course of search operation u/s 132 of the Act on 02.07.2018 no statements of the appellant was recorded by the search party u/s 132(4) specifically when the appellant was present in the house hence addition made and maintained by the two lower authorities are incorrect.
2. That in any view of the matter written submission filed before the CIT(A) on 28.02.2023 duly endorsed on the receipt counter but without granting personal hearing by CIT(A) decided the appeal on 06.03.2023 (within 6 days) without opportunity which is against the principal of natural justice.”

After consideration, the additional grounds of appeal are admitted.

3. The facts of the case, in all three assessment years, are that a search and seizure operation under section 132 was carried out in the case of Hari Om Rastogi group on 2.07.2018. During the course of the search, locker no. 75 at HDFC Bank, Fatehpur belonging to Sh. Monu Rastogi and Smt. Nivedita Rastogi, who were the son and daughter in law of the assessee, was also covered. In the said locker, some pawned jewellery was found which was inventoried separately. The pawned

jewelleries had slips attached to them containing details such as; names of borrower, date, amount advanced, items pawned etc,. A statement of Sh. Monu Rastogi was recorded on 3.08.2018, wherein he stated that the pawned jewelleries in locker no. 75 pertained to his mother, Smt. Lakshmi Devi. During the course of assessment, the ld. AO asked the assessee to confirm these facts. Initially, Smt. Lakshmi Devi (the assessee) submitted that she has been doing the business of money lending since 2004-05, for which she also had a license issued against her name. However, subsequently, when the ld. AO noticed a discrepancy between the amount she stated to have advanced and the amount calculated after looking at the slips attached to the pawned jewelleries and also the fact that neither any income from money lending business had been offered in her return nor were the advances disclosed in her balance-sheet, the assessee did a U-turn. She submitted that the business was being done on a very small scale from the year 2007 and the initial investment of Rs.8,00,000/- was made in that year, from money received from her son Shri. Monu Rastogi and her husband, Shri. Jagdish Prasad. The accumulated fund was invested in money lending business and was rotating amount, which was invested in this year. It was further submitted that there was no incriminating material that was found and therefore, any addition made on this account was unjustified in an assessment under section 153A. The assessee also submitted that while she had a money lending license, she had nothing to do with the pawning business. At the same, she furnished a list of advances given by her during the year, which was at variance from that observed at the slips attached to the pawned jewellery. In view of all these stands taken by her, the ld. AO held that her arguments were contradictory and only made because she had not disclosed the income from money lending or the money lending advances in her returns, either under section 139 or filed in response to notice section 153A. The ld. AO therefore made an addition of Rs.1,15,827/- on this account in the assessment year 2013-14, Rs.3,90,000/- in the assessment year 2014-15 and Rs.2,19,000/- in the assessment year 2015-16.

4. Aggrieved with these additions, the assessee went in appeal to the Id. CIT(A), Lucknow-3, who after consideration of her arguments, dismissed her appeals. Aggrieved with the said dismissal of appeals, the assessee has now come before us in appeal.

5. Shri. Praveen Godbole, C.A. (hereinafter referred to as the 'Id. AR') appeared on behalf of the assessee. At the very outset, he did not press ground no.6 relating to grant of approval by the JCIT. Nor did he submit any arguments with regard to the said ground. Accordingly, ground no. 6 is dismissed. With regard to the remaining grounds of appeal, the Id. AR submitted that there was no justification for the addition to be made in the hands of the assessee. It was submitted that the locker from which the pawned jewellery was found did not belong to the assessee but to her son, Shri. Monu Rastogi. It was also submitted that even though the assessee was present during the search on 2.07.2018, her statement had not been recorded by the search party under section 132(4). Rather, the Id. AO had relied upon the statement of her son, Shri. Monu Rastogi recorded on 3.08.2018, wherein he had said that the pawned jewellery in locker no.75 pertained to the assessee. It was submitted that the assessee had admitted to the fact that the license of money lending was in her name, but had never admitted to the fact that the pawned jewellery found in the locker was on account of her business. It was submitted that the investment in the money lending business was made out of money advanced by her husband Shri. Jagdish Prasad and her son Shri. Monu Rastogi in the year 2007, amounting to Rs.8,00,000/- and it was this money that had been invested by rotation from that year onwards. Therefore, it was not correct to hold that money as unexplained in her hands. Furthermore, it was submitted that her son, Shri. Monu Rastogi, had made a disclosure of Rs.3 Crores in the hands of the firm during the search to cover for all possible leakages of income and therefore, it was not correct to assess the income from pawning business in her hands, particularly because the pawning business was done by the family and not by her in her individual capacity.

Furthermore, it was submitted that this was an assessment under section 153A and no incriminating material had been found against the assessee which would entitle an addition in her hands on his account. Finally, it was submitted that invocation of section 115BBE in her case and charge of penal interest were unjustified.

6. On the other hand, Shri. A.N. Mishra, Id. CIT DR (hereinafter referred to as the 'Id. CIT DR') appearing on behalf of the Revenue, argued that the assessee had taken contradictory stands at various levels. After accepting the fact that she was engaged in money lending business and after herself submitting the amount of money advanced, when she was confronted with the fact that these advances did not appear in her balance-sheet and the income did not appear in her returns, she changed her stance regarding who was doing the money lending business. Since, the license was in her name, it was clear that the money lending business could only have been done by her and therefore, he prayed that the addition deserved to be confirmed in her hands. The Id. CIT DR also submitted that the slips attached to the pawned jewellery discovered during the search on the basis of which the assessment under section 153A was done, were the incriminating material found and therefore the assessment, which was done on their basis, was valid. On the issue of application of section 115BBE and section 234A and 234E, the Id. CIT DR submitted that these were the natural corollary of additions made under section 69 and assessments concluded by way of additions.

7. We have duly considered the facts and circumstances of the case. While it is not in doubt that the money lending license stands in the name of the assessee, it is also a fact that the pawned jewellery has not been recovered from her, but from a locker that belonged to her son and daughter in law. It is also pertinent to note that the fact that this jewellery pertained to her business was communicated to the department by Shri. Monu Rastogi, from whose possession this jewellery was found, in his statement dated 3.08.2018. Thus, the presumption in section 292C cannot be held against the assessee but rather it could apply against her son, Shri. Monu

Rastogi, to be disproved by him in the course of his assessment. We observe that the assessee has not, at any point of time, admitted that the said jewellery in the locker was on account of her money lending business. While she admits to having advanced money over the years, she also submits that the money lending business was done by the family. In the circumstances, it is our view that before the investment into and the income from the money lending business can be assessed in her hands, the beneficiary of the money lending business is required to be determined. We have been informed by the Id. AR, that the remaining appeals of this group are still pending before the Id. CIT(A)-3, Lucknow. Therefore, considering the facts and circumstances of the case, we deem it appropriate to restore these matters also to the file of the Id. CIT(A), to determine whether the money lending business was being carried out by the assessee individually, or whether it was being carried out in her name by other members of the family. Needless to say, the income from money lending business has to be brought to tax in the appropriate hands. Accordingly, the Id. CIT(A) may consider these arguments furnished by the assessee and address the matter while examining the other cases of the group. Grounds no. 1 to 5 are accordingly allowed for statistical purposes. With regard to ground no. 7, we are in concurrence with the view of the Id. CIT DR that the pawned jewellery and the slips attached to them constitute sufficient incriminating material to trigger additions under section 153A. With regard to ground nos. 8 and 9, it is observed that since the matter has been restored to the file of the Id. CIT(A) for re-determination of the beneficiary of the income from pawning business, computation of tax and interest will necessarily be subject to the findings of the Id. CIT(A) in the matter. The grounds are disposed accordingly. With regard to the ground no. 10, it does not require adjudication. As regards, the additional grounds of appeal, we observe that the fact that no statement was recorded of the assessee on 2.07.2018 does not in any way impact upon the additions that have been made, as these were on account of the statement of Shri. Monu Rastogi dated 3.08.2018. Hence, this ground has no relevance to the issue and is accordingly, dismissed. Furthermore, we observe that

the Id. CIT(A) had considered the written replies of the assessee filed on 28.02.2023 and therefore, was not under any obligation to grant any personal hearing to the assessee thereafter, and there has been no violation of principles of natural justice on this account. Accordingly, both the additional grounds of appeal are dismissed.

8. In the result, all three appeals of the assessee are held to be partly allowed.

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

DATED: 27/12/2024

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Copy forwarded to:

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

By order
Sr. P.S.