

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

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

ITA No.88/ALLD/2024
A.Y. 2017-18

Vipin Gupta, Lal Bihara, G.T. Road, Bamrauli, Allahabad, U.P.	vs.	Income Tax Officer, Ward-2(3), Allahabad
PAN:ANAPG6886D		
(Appellant)		(Respondent)

Assessee by:	Sh. S.K. Jaiswal, C.A.
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	22.10.2024
Date of pronouncement:	27.12.2024

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal against the order of the Id. CIT(A), NFAC passed under section 250 of the Income Tax Act, 1961 on 16.05.2024. The appeal was originally filed before the Id. CIT(A), Allahabad and was subsequently migrated to the National Faceless Appeal Centre. The grounds of appeal preferred by the assessee are as under:-

"1. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing appeal in limine without affording adequate and effective opportunity of being heard.

2. BECAUSE the learned commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 5,68,500/- made on account of initial capital introduced to start new business by invoking the provision of section 68 of the Income Tax Act, 1961 as unexplained credit.

3. BECAUSE the appellant has established the source of initial capital of Rs. 5,68,500/- introduced out his past saving and furnished the relevant documentary evidence.

4. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 12,00,000/- on account of unsecured deposits taken from-

a.	Sri Deepak Gupta	Rs.2,00,000/-
b.	Sri Devi Prasad Gupta	Rs.5,00,000/-
c.	Sri Manoj Kumar Gupta	Rs.1,00,000/-
d.	Sri. R.B. Kesarwani	Rs.1,00,000/-
e.	Smt. Bimla Gupta	Rs.1,00,000/-
f.	Sri Vinod Gupta	Rs.2,00,000/-

as unexplained credit by invoking the provision of section 68 of the Income Tax Act, 1961.

5. BECAUSE the appellant has discharged his primary onus to establish the identity of the depositors, their credit worthiness as well the genuineness of the transaction by furnishing their identity proof, assessment particulars, bank account statement and their confirmation.

6. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 7,13,000/- on account of deposit of Specified Bank Notes (SBN) of Rs. 10,98,000/- during the demonetization period from 09.11.2016 to 31.12.2016 as unexplained investment by invoking the provision of section 69A of the Income Tax Act, 1961.

7. BECAUSE the learned Commissioner of Income Tax (Appeals) has failed to note that appellant has deposited SBN of Rs. 10,98,000/- out of closing cash balance as on 08.11.2016 duly verifiable from the copy of cash book uploaded on e-filing portal during the course of assessment proceeding.

8. BECAUSE the order the appellant denies levy of interest under various sections of the Income Tax Act, 1961.

9. BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice."

2. The facts of the case are, that the assessee e-filed his return of income declaring a total income of Rs.4,30,350/- after claiming deduction under Chapter VIA. The case was selected for complete scrutiny and accordingly notices were issued. As high value receipts of cash were seen from third parties, the assessee was

required to furnish the details of such receipts and payments with documentary evidence. He was also required to furnish the copy of response filed with the Department in respect of cash transactions 2016 and to explain the source of cash deposits during the financial year 2016-17. Thereafter, the assessee sought repeated adjournments. Ultimately, the ld. AO issued a show cause notice to him and in response to the show cause notice, the assessee made compliance and furnished a reply along with certain attached documents, which has been acknowledged by the ld. AO. The ld. AO obtained bank statement and other information directly from the banks and from the same observed that the assessee had introduced fresh capital of Rs.5,30,000/- in cash. He required the assessee to explain the source of this fresh capital introduction with documentary evidences. The assessee furnished his submission and explained that the capital had been introduced out of savings of previous years. In support thereof, he filed copies of his ITRs for the assessment year 2012-13 to 2016-17. The ld. AO observed that the incomes offered by the assessee in the previous assessment years were barely sufficient to support his family and his livelihood therefore, the capital addition of Rs.5,68,500/- as disclosed from savings from salary income, were next to impossible. He, therefore, added the same back to the income of the assessee, holding them to be unexplained. The ld. AO also observed that the assessee had received unsecured loans / deposits amounting to Rs.12,00,000/- from five different persons. He asked the assessee to furnish details to establish the identity and creditworthiness of the depositors and the genuineness of the deposits. In response, it was submitted that all the deposits were through cheques and confirmation of the depositors were filed. Copies of bank statements of the depositors were also filed. All the depositors confirmed the source of deposits, as being out of their past savings. However, the ld. AO was not impressed by the submissions. He went through the bank statement and he found the following contradictions:-

- i. In the case of Smt. Renu Gupta, he found that a cash of Rs.1,00,000/- had been deposited into her bank account on 13.07.2016 and on 14.07.2016, that amount was transferred to the assessee's bank account.
- ii. In the case of Sh. Manoj Kumar Gupta, it was found that cash of Rs.1,00,000/- was deposited in his account on 19.11.2016 and the money was transferred to the assessee's account on 25.11.2016.
- iii. In the case of Sh. Devi Prasad Gupta, it was found that cash was deposited into the account of Sh. Devi Prasad Gupta on 11.07.2016 and 20.07.2016 and Rs.3,00,000/- was transferred to assessee's bank accounts on 14.07.2016 while sums of Rs.1,00,000/- each were transferred on 21.07.2016 and on 30.08.2016.
- iv. In the case of Sh. Vinod Kumar Gupta, he found that a cash of Rs.1,00,000/- was deposited on 11.07.2016 just before the transfer of Rs.2,00,000/- on 14.07.2016.
- v. In the case of Smt. Vimla Devi, it was found that money was transferred on 14.07.2016 and the bank account did not reflect the source of the deposit.
- vi. In the case of Sh. Deepak Gupta, the assessee failed to submit the copy of the bank account statement and therefore, the ld. AO was not able to verify the credits of Rs.2,00,000/- made on two different dates.

From the above, the ld. AO concluded that since the credits from these account had all been preceded by a deposit into these accounts and no income tax returns of these creditors had been furnished to prove their creditworthiness, the transactions could not be held to be genuine. He, therefore, added the total credit amount of Rs.12,00,000/-, received from these lenders / depositors as unexplained income of the assessee. Finally, the ld. AO observed that during the demonetization period, the assessee had deposited Rs.49,61,500/- into his bank account out of which Rs.10,98,000/- was in specified bank notes. He asked the assessee to produce

the cash book, so as to verify the cash balance as on 8.11.2016, but the assessee failed to produce the cash book. In the monthly details of cash balance that was produced, the ld. AO found that the cash in hand as on 31.10.2016 was Rs.3,84,732/- . He considered that, as the balance on 8.11.2016 and added back the remaining specified bank notes to the extent of Rs.7,13,000/-, as unexplained investment under section 69A.

3. Aggrieved with these additions, the assessee went in appeal to the ld. CIT(A). The ld. CIT(A) records that the assessee had failed to produce the cash book and had not submitted any details to the ld. AO or to him, as to why the addition of Rs.7,13,000/- on account of unexplained deposit of specified bank notes should not be added back to the income of assessee. He, therefore held that since the assessee had not furnished any documentary proof or logical explanation as to why the same should not be added back, the addition of Rs.7,13,000/- was fit to be confirmed on this account. With regard to the addition of Rs.5,68,500/- on account of introduction of capital also, the ld. CIT(A) held that the assessee had not submitted any details with the ld. AO or his office and that no documentary proof in support of the explanation furnished had been made. Since, the assessee had not discharged his onus in this regard, therefore, the action of the ld. AO was upheld and the addition made was sustained. With regard to the unexplained cash credits under section 68 of the Act, the ld. CIT(A) held that no documentary proof had been submitted by the ld. AO to back up explanations and he accordingly confirmed the orders of the ld. AO. It may not be out of place to mention that the ld. CIT(A) decided the matter on the basis of the statement of facts and the grounds of appeal, because the assessee did not make any compliance in response to the notice of hearing that was issued.

4. Aggrieved with these additions, the assessee has come before us in appeal. Shri. S.K. Jaiswal, C.A. (hereinafter referred to as the ld. AR) appearing on behalf of

the assessee, submitted that no proper opportunity had been given to the assessee. The ld. CIT(A) had not even discussed the dates on which notices had been issued to the assessee, to which the assessee had purportedly not made compliance. Accordingly, it was submitted, that the ld. CIT(A) had passed the orders in haste without giving an opportunity to the assessee to substantiate the grounds of appeal with due evidence. With regard to the addition made by the ld. AO, it was submitted that the cash book had been duly uploaded along with the reply dated 20.10.2019 and therefore, the observation that the assessee had failed to produce the cash book and the cash balance on 8.11.2016 were totally divorced from the facts and material that was on record. It was submitted that as per the cash book that was uploaded, the cash balance as on 8.11.2016 came to Rs.10,90,281/- and therefore, without rejecting the said cash book, the ld. AO could not make any addition on account of the specified bank notes deposited in the bank account. With regard to the additions made in respect of introduction to capital, it was submitted that not only had the assessee filed copies of his income tax returns, but also the computation of income and balance-sheet for those years. However, the ld. AO had not bothered to go through them and had simply made the addition on account of a presumption. It was submitted that there was sufficient cash available with the assessee and evidence in this regard had been furnished during assessment proceedings. But the ld. AO, without controverting the same, had made the additions. With regard to the unsecured loans amounting to Rs.12,00,000/-, it was submitted that the assessee had submitted confirmations, bank passbooks and income tax returns and therefore, discharged the initial onus laid upon him. The ld. AO had rejected all this, because some depositors had made cash deposits into their own bank account, prior to the issue of cheques to the appellant. It was submitted that such an approach was wholly untenable in the eyes of law, as the assessee could not be asked to prove the source of the source. It was submitted that the ld. CIT(A) had not considered any of

these facts and had simply dismissed the appeal of the assessee on a pre-conceived notion.

5. On the other hand, Sh. A.K. Singh, Sr. DR (hereinafter referred to as the Id. Sr. DR) appearing on behalf of the Revenue, submitted that the assessee had not filed any proper documentary evidence on the basis of which the Id. AO could conclude that the additions that were made by him were not required to be made. It was therefore, submitted that the additions made ought to be confirmed.

6. We have duly considered the facts and circumstances of the case. We observe that the assessee has claimed to have filed copies of the income tax returns of the creditors. The creditworthiness of the depositors cannot be measured only against the fact of cash being deposited to their bank accounts immediately before credit to that of the assessee. Their overall financial standing has to be taken into account. We, therefore, feel that the matter has not been investigated in this light and we, therefore, restore this issue to the file of the Id. AO, for consideration of any evidences that the assessee may wish to file before him to prove the creditworthiness of the depositors. As regards, the deposit of Rs.10,98,000/- in specified bank notes, it is observed that the assessee has uploaded a cash book in which the balance as on 8.11.2016 is far in excess of the balance adopted by the Id. AO. It is evident that the Id. AO has not examined this cash book. Accordingly, we restore this matter also back to his file for consideration of cash book, before concluding that any portion of the deposits of specified bank notes are unexplained, with relation to the cash available as per the books of accounts of the assessee. Finally, we observe that the assessee has filed his previous returns, computation of income and balance-sheet in support of his introduction of capital. It is not clear from the Id. AO's order, as to whether the computation and balance-sheet have been taken into account, while coming to a conclusion that the resources available with

the assessee were insufficient to permit capital introduction of Rs.5,68,000/-. Accordingly, this issue is also remanded back to the file of the ld. AO for re-examination of the same. In view of the fact that all additions have been restored to the file of the ld. AO for re-consideration, after re-examination of evidences, the appeal of the assessee is held to be allowed for statistical purposes.

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

Orders pronounced on 27.12.2024 at Allahabad U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

DATED: 27/12/2024

Sh

Copy forwarded to:

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

By order
Sr. P.S.