

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD 'SMC' BENCH, ALLAHABAD  
(HEARD BY DB)**

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

ITA No.128/Alld/2024  
A.Y. 2011-12

Sushil Kumar Mishra, F-6, Lowther Road George Town, Allahabad-211006	vs.	Deputy Commissioner of Income Tax (Circle-1), Allahabad
<b>PAN:AXVPM0472C</b>		
(Appellant)		(Respondent)

Assessee by:	None
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 dated 27.06.2024. The grounds of appeal preferred are as under:-

*"1- That in any view of the matter order passed u/s 147/144 of the Act dated 10.12.2018 by the assessing officer and confirmed by CIT(A) **by passing ex-parte decision** is uncalled for and more so addition made are illegal. The action u/s 147/148 of the Act is totally illegal.*

*2. That in any view of the matter both the lower authorities decided the matter ex-parte without considering the fact and without providing opportunity to the assessee hence the order of two lower authorities liable to be cancelled as illegal in the fact of circumstances of the case.*

*3. That in any view of the matter CIT (Appeal) is highly unjustified in deciding the appeal ex-parte without giving reasonable time, without service of notice and more so no personal hearing was allowed in this background addition as confirmed by CIT Appeal is uncalled for.*

4. That in any view of the matter order passed u/s 147/144 dated 10.12.2018 by the assessing officer by making two addition amounting to Rs.35,05,580/- and Rs.68,300/- which are made by A.O. & maintained by CIT(Appeal) by order dated 27.06.2024 by passing ex-parte decision is highly unjustified and such action is illegal.

5. That in any view of the matter addition of Rs.35,05,580/- as cash deposit in bank added in the total income of the assessee which was confirm by CIT(Appeal) by passing ex-parte decision is highly unjustified in the fact and circumstances of the case.

6. That in any view of the matter the deposit in bank were made from definite sources but explanation offered by the assessee ignored by the two lower authorities by passing ex-parte decision is highly unjustified as the matter was not properly adjudicated/considered by the two lower authorities hence addition is unwarranted.

7. That in any view of the matter the addition of Rs.68,300/- as made by assessing officer by saying income from other sources is not correct and more so the CIT(A) is wrong in confirming the addition by passing the ex-parte decision.

8. That in any view of the matter finding and observation of the two lower authorities in making and confirming the addition are incorrect and more so the reasons given are not correct for making the addition hence addition liable to be deleted.

9. That in any view of the matter in the facts and circumstances of the case addition are liable to be deleted in the fact and circumstances of the case.

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

2. The facts of the case are that the assessee had deposited cash of Rs.46,18,300/- in his bank account for which a notice under section 148 was issued to him. However, the assessee did not respond to various notices issued by the Id. AO, as a result of which penalty proceedings were initiated against him under section 271(1)(b). In response to this penalty notice, the assessee filed a partial reply, but the Id. AO records that he did not give a specific reply with regard to the issues raised in the notice under section 142(1). Accordingly, Id. AO did a best

judgment assessment and added back a sum of Rs.35,05,380/- that he found to be deposited in two bank accounts of the assessee at Axis Bank. He also added back the interest of Rs.68,300/- earned on these two bank accounts and assessed the income of the assessee at Rs.42,57,170/-.

3. Aggrieved with the said order, the assessee went in appeal before the Id. CIT(A). However, it is seen from the order of the Id. CIT(A), that the assessee failed to comply with the various notices under section 250 that were issued by the Id. CIT(A). Therefore, the Id. CIT(A) observed that since the assessee had not filed any submissions to throw a light on any grounds of appeal, the findings of the Id. AO could not be challenged only on submissions without any evidence and therefore, he dismissed the appeal of the assessee.

4. Aggrieved with the said dismissal, the assessee is now before us in appeal. When the case was called out for hearing, nobody appeared on behalf of the assessee. Shri. A.K. Singh, Sr. DR (hereinafter referred to as the Id. 'Sr. DR') represented the department. Ongoing through the grounds of appeal, it is seen that assessee has submitted that he was a professional who was practicing in the Allahabad High Court. He submitted that the credits in the said bank account were from definite sources and the lower authorities had erred in adding back the credit side of the bank accounts without considering the debit side. It was submitted that proper opportunities had not been provided by the lower authorities and therefore, the addition was liable to be deleted.

5. On the other hand, Shri. A.K. Singh, Id. Sr. DR observed that the ample opportunities had provided by both the Id. AO and the Id. CIT(A) but the assessee had not complied. Therefore, since the credits in the bank accounts were unexplained, the lower authorities were justified in adding the same and confirming the addition in the hands of the assessee.

6. We have duly considered the facts and circumstances of the case. At the very outset, we wish to point out that the pleas of the assessee that he was not provided adequate opportunity are unfounded. The perusal of the assessment and the appeal order show that a number of notices were issued but the assessee did not make compliance to them. The reason for non-compliance is known best to the assessee himself. Be that as it may, we also observed that the assessee has consistently been asserting that the deposits are from definite sources and that addition of the entire amount is unjustified, because he was a professional and the amounts debited had to be allowed before computing his income. We observe that there is no real finding of fact on the nature and source of the deposits, either in the course of assessment or appeal. We also observe that the Id. AO has made the addition under section 68, without bringing on record the fact that the sums were credited to the books of the assessee, which is a *sine qua non* for addition under section 68. Therefore, in the interest of justice, we deem it appropriate that the assessee should be allowed an opportunity to present his case, before the Id. AO to show that the deposits made in the two bank accounts were not unexplained and therefore, not liable for addition under section 68 or 69 of the Act.

7. The assessment is accordingly set aside and the matter is remanded to the file of the Id. AO for *de novo* assessment.

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

Orders pronounced in open court on 27.10.2024 at Lucknow 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.