

**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.113/Alld/2024  
A.Y. 2017-18

Vijay Singh, 9R/1, MLN Road, Church Lane, Allahabad, U.P.	vs.	Income Tax Officer-1(5), Allahabad
<b>PAN:AZEPS1524N</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, 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. Addl CIT(A)-5, Mumbai dated 14.05.2014, wherein the Id. Addl CIT(A), has dismissed the appeal filed by the assessee. The grounds of appeal preferred are as under:-

*"1. That in any view of the matter assessment framed u/s 144 of the Act by order dated 13.11.2019 on income of Rs.6,45,000/- is bad both on the facts and in law.*

*2. That in any view of the matter both the two lower authorities failed to appreciate the facts regarding cash deposit in bank which was from definite sources without providing reasonable opportunity to the assessee hence entire action is bad in law.*

*3. That in any view of the matter addition of Rs.6,45,000/- u/s 69A of the Act is not correct when the cash deposit in bank was from definite sources and was the explained money but the issue was not consider properly by the assessing officer as well as by CIT Appeal which action is highly unjustified.*

*4. That in any view of the matter finding and observation of both the two lower authorities with regard to addition of Rs.6,45,000/- are totally incorrect and contrary to the actual facts of the case.*

*5. 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 is an individual and derives salary income from Maharshi University of Information Technology, Lucknow. Due to information received, that a sum of Rs.20,52,940/- had been deposited in the account of Allahabad College of Engineering and Management, which was run by Lord Buddha Education and Charitable Society, of which the assessee was earlier the Secretary and upon observing that the PAN of the assessee was also linked to the said bank account, the ld. AO issued notice under section 142(1) of the Income Tax Act to the assessee, asking him to file a return, as no ITR had been filed by him. In response to the said notices, the assessee responded that he was earlier the Secretary of the society and the KYC documents of the society showed that both the PAN of the society and the Secretary had been supplied to the bank and the bank had by mistake, submitted the cash deposit information against the PAN of the assessee rather than that of the society. It was further submitted that the cash deposited was out of fee collection from students and deposited in the account of the college. Furthermore, the society had filed an income tax return and in support thereof, a copy of ITR V for 2017-18, audited balance-sheet, P & L account etc., were also furnished. The assessee further submitted that separate scrutiny proceedings were underway in the case of the society. While the ld. AO accepted his submission with regard to the society, he also observed that the assessee had two other bank accounts, one at Allahabad Bank and the other at YES Bank and that during the year, a sum of Rs.6,45,000/- had been deposited into these two accounts. He, therefore, asked for the source of the deposits. In response, it was submitted that a loan of

Rs.4,20,000/- vide cheques / transfer was received from Allahabad College of Engineering & Management, which was reflected in the balance-sheet of Lord Buddha Educational and Charitable Society, which was submitted by the assessee. The Id. AO observed that the assessee had not filed any returns but filed a computation of income where he had shown income from profession of Rs.2,70,000/- under section 44ADA. However, since no proof had been filed in this regard, he declined to consider the same and held that the entire amount of Rs.6,45,000/- was unexplained in the hands of the assessee. He, therefore, brought it to tax under section 69A of the Act and levied tax as per section 115BBE. Penalty proceedings under section 271AAC were also initiated.

3. Aggrieved with the assessment, the assessee went in appeal to the Id. CIT(A), Allahabad. Subsequently, the appeal was allotted to e-appeal scheme in terms of CBDT notification dated 23.05.2023. The assessee did not make any compliance before the Id. Addl CIT and therefore, the Id. Addl CIT dismissed the appeals of the assessee for want of prosecution. He also observed that no documentary evidences had been filed to substantiate the source of the cash deposit and only general and vague statements had been made in the statement of facts. Accordingly, he dismissed the appeal of the assessee.

4. Aggrieved with the said summary disposal of his appeal, the assessee in appeal before us. Shri. Praveen Godbole, C.A. (hereinafter known as the Id. 'AR') submitted before us that the assessee was an individual deriving salary income from Maharshi University of Information Technology and assessed to tax for a number of years. For the said year, since the income was below taxable limit, hence no return had been filed originally. The addition of Rs.6,45,000/- made under section 69A was assailed, stating that the amount was deposited in a joint account along with his wife and was from definite sources, but no cognizance was taken to the details filed and

addition was made simply on presumption. The first appeal had been dismissed by the ld. Addl CIT(A) in an *ex parte* manner, without providing reasonable opportunity to the assessee and therefore, the assessee had been denied the opportunity to present the facts of the case before the ld. Addl CIT(A).

5. On the other hand, Shri. A.K. Singh, Sr. DR (hereinafter referred to as the 'ld. Sr. DR) appearing on behalf of the Revenue, submitted that the assessee had been given ample opportunities by the ld. AO and the ld. CIT(A) but had been changing his story on every occasion and not furnishing any proof in support of the deposits made. He, therefore, submitted that it was a case of unexplained income which was fit to be added back under section 69A of the Act.

6. We have duly considered the facts and circumstances of the case. We find that the ld. Addl CIT(A) has dismissed the case of the appellant, for failure of the appellant to comply to the various notices issued by him and due to the shifting stance of the assessee before the ld. AO. The ld. CIT(A) also came to the conclusion that the assessee was not interested in pursuing the appeal. However, ld. AR has submitted that this was not so and the addition was unjustified, because certain of the funds deposited belonged to the wife of the assessee and were therefore, not taxable in his hands. We are of the view that it is for the assessee to bring evidence on record to show why a certain amount that is credited to the bank accounts should not be brought to tax in his hands, but the assessee has not provided that evidence before the lower authorities. However, considering the arguments, in the interest of justice, it is felt appropriate to restore the matter back to the file of the ld. Addl CIT(A) so that the assessee may have an opportunity to present the full facts along with evidences before the ld. Addl CIT(A) to show why the sum of Rs.6,45,000/- that had been added to his income by the ld. AO, ought not to be sustained in his hands. We, therefore, restore the matter back to the file of the ld.

Addl CIT(A) to pass a fresh order in accordance with law after giving the assessee due opportunity for filing of necessary evidences and for being heard. As the appeal has been set aside to the file of the ld. AO Addl CIT(A), the appeal is held to be allowed for statistical purposes.

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

Orders pronounced in open court on 27.12.2024 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.