

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

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

ITA No.110/ALLD/2024  
A.Y. 2012-13

Shyam Babu Kesarwani, Tilhapur Mor, Kaushambi	vs.	Income Tax Officer, Ward-2(5), Kaushambi
<b>PAN:BGEPK4506N</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. CIT(A), NFAC under section 250 of the Act passed on 22.12.2023. The grounds of appeal preferred are as under:-

*"1. That in any view of the matter assessment made u/s 143(3) r.w.s. 147 of the Act by order dated 31.10.2019 on income of Rs.28,27,870/- is bad both on the fact and in law.*

*2. That in any view of the matter proceeding as initiated u/s 147 is not valid proceeding in the eyes of law since no material was brought on record that assessee has concealed any income and the issue again taken up in the reassessment proceeding which was already before the assessing officer at the time of original assessment and after due application of mind the then assessing officer passed speaking order u/s 143(3) of the Act hence simply on change of opinion the reassessment proceeding u/s 147 of the Act as initiated are bad in law.*

*3. That in any view of the matter the addition of Rs.25,25,415/- as made by the assessing officer by passing ex-parte order on account of excess deposit in bank considered as unexplained money u/s 69A of the Act is highly unjustified and his action as confirmed by CIT(A) is highly unjustified.*

*4. That in any view of the matter it is settled proposition that reassessment proceeding u/s 147 of the Act cannot be initiated simply on the change of opinion as done in the present case hence entire action is not valid action in the eyes of law.*

*5. That in any view of the matter the finding and observation of the assessing officer with regard to addition of Rs.25,25,415/- as added u/s 69A of the I.T. Act on account of unexplained money is not correct since the amount was deposited from definite sources which fact duly verified by the then assessing officer hence action on same material by the assessing officer simply on change of opinion and his action as confirmed by CIT(A) is highly unjustified.*

*6. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal."*

2. It is observed that there is a delay in filing the appeal. While the same was to be filed by 22.02.2024, it has actually been filed on 9.07.2024. The assessee has filed a condonation petition, in which it has been submitted that the reason for delay was on account of the fact that the earlier counsel Shri. R.K. Mishra, C.A., who was looking after tax and audit matter in the original assessment proceedings, was keeping unwell and ultimately he expired. Records were kept with him and even the email ID and mobile number, as mentioned in Form 35, belonged to counsel. Thus, the assessee were not aware about the passing of the *ex parte* order by the Id. CIT(A) and the delay was on account of exceptional and unavoidable circumstances that were beyond his control. In support of this petition, the assessee also filed an affidavit. After considering these circumstances enumerated in the said petition and affidavit, the delay is condoned and the grounds are admitted for hearing.

3. The facts of the case are that the Id. AO observed that despite the fact of scrutiny assessment having been done in the case of the assessee under section 143(3) of the Act on 28.03.2015, subsequent to the same, it had been noticed that the total deposits in the bank account for the F.Y. 2011-12 were Rs.2,48,08,212/- while the total sales were only Rs.2,21,78,988/- and therefore, there was an excess deposit in the bank account of Rs.26,29,224/-, which had not been substantiated by

the assessee during the course of assessment. He further noted that as per the balance-sheet dated 31.03.2011, there were sundry debtors to the extent of Rs.1,03,809/- which were not there in the year ending 31.03.2012. Therefore, presuming that the sundry debtors had been realized, he deducted this amount from the difference in the bank account statement and came to a belief that an amount of Rs.25,25,415/- was the undisclosed income of the assessee which had escaped assessment. He issued various notices to the assessee, but no compliance was made during the course of assessment proceedings. Therefore, the ld. AO added back a sum of Rs.25,25,415/- to the income of the assessee and initiated penalty proceedings under section 271(1)(c). The ld. assessee went in appeal to the ld. CIT(A) on 6.03.2020. The ld. CIT(A) records the fact that three notices under section 250 were issued to the assessee, to which the assessee did not furnish a response. From the same, the ld. CIT(A) was not interested in pursuing the appeal and therefore, relying upon some case laws, held that the appeal was fit to be dismissed on account of non-prosecution. Accordingly, he dismissed the appeal.

4. The assessee is aggrieved at this summary disposal of his case by the ld. CIT(A) and has accordingly come before us. Shri. Praveen Godbole, C.A. (hereinafter referred to as the 'ld. AR') appearing on behalf of the assessee, submitted that the ld. CIT(A) was totally unjustified in dismissing his appeal without considering the facts of the case. It was submitted that no material had been brought on record to show that the assessee had concealed any income and since the issue taken up in re-assessment was already before the ld. AO at the time of original assessment and had been decided after due application of mind, the re-assessment proceeding initiated simply on a change of opinion was bad in law. It was submitted, that since the source of deposits had already been verified by the ld. AO in the course of the original assessment, the adding back of the said amount under section 69A as unexplained money, was not justified. It was further submitted that the ld. AO had

been informed that the assessee had not been able to make compliance due to certain mental disturbance, but he would make compliance shortly. However, the Id. AO without waiting for such compliance, had hurriedly passed the order. It was submitted that if an opportunity was given, the assessee could explain the so called discrepancy in the bank account.

5. On the other hand, Shri. A.K. Singh, Sr. DR (hereinafter referred to as the 'Id. Sr. DR') submitted that the addition had been occasioned by the fact that the assessee had not made compliance before the Id. AO. Therefore, if the Tribunal in its wisdom decided to restore the matter back, it should give the direction to the assessee to make due compliance before the Id. AO and warn the Assessee, that the failure to make such compliance could be viewed adversely.

6. We have duly considered the facts and circumstances of the case. We observe that the case of the assessee was taken up for scrutiny under section 143(3) and after such scrutiny, the income of the assessee had been determined at Rs.3,02,450/-. We also observe that the assessee has submitted that the said bank account had been presented to the Id. AO during scrutiny proceedings and therefore, the decision of the to consider certain deposits as unexplained, were nothing more than change of opinion. However, we observe that the issue could have been settled at the level of Id. AO himself had the assessee furnished a re-conciliation chart explaining the said deposits, which he has not done during the course of assessment proceedings. In the interest of justice, we, therefore, deem it fit to restore the matter back to the file of the Id. AO, with a direction to the assessee to furnish the necessary re-conciliation to show, that the deposits in the said bank account that are alleged to be unexplained, were in fact not so. We also direct the Id. AO to take these submissions into account and thereafter frame a fresh assessment in accordance

with law. As the matter has been restored to the file of the ld. AO, 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 Allahabad U.P.

***Sd/-***

**[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER**

DATED: 27/12/2024

Sh

Copy forwarded to:

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

***Sd/-***

**[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER**

By order  
Sr. P.S.