

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

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

ITA No.100/ALLD/2024  
A.Y. 2017-18

Rajendra Tripathi, Pharenda Road, Gorakhpur-273155, U.P.	vs.	Income Tax Officer-1(4), Maharajganj
<b>PAN:AADFI7669A</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Bansal, Advocate
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	28.10.2024
Date of pronouncement:	27.12.2024

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed against the order under section 250 of the Income Tax Act, 1961 passed by the Id. CIT(A), NFAC on 30.05.2024. The grounds of appeal preferred by the assessee are as under:-

*"1. BECAUSE the Ld. CIT(A) has erred in law as well as on facts in restricting the relief to Rs.8,16,905/- (being 30% of the overall disallowance) only as against the overall disallowance aggregating to Rs.27,23,015/- made by the Id. Assessing Officer under various heads of expenses being "Advertisement and Publicity, Staff Welfare, Sales Promotion Expenses, Salary to staff", while passing the assessment order dated 19.12.2019, as the said addition itself is based on a very fallacious ground that;*

*"It is customary in assessment orders to disallow percentage of certain expenses for different reasons. However in this case I rely on the daily observation of the staff of the Income Tax Office, Maharajganj who are sure that the assessee works through daily wagers for loading and unloading of goods and does not employ any staff. Besides the above the other three expenses have never been observed to have been incurred."*

2. BECAUSE the Id. CIT(A) has erred in law as well as on facts on sustaining the addition of Rs.19,06,110/- as against the disallowance of Rs.27,23,015/- made by Id. Assessing Officer by observing that;

*"These are not expenses incurred by a shop selling edible oil, Rice etc. There are the expenses disallowed by the assessing officer. Since this is based only on a common sensical knowledge, the reason cited cannot be accepted in toto. Considering the facts of the case 30% such expenses will be given as a relief. Since there is possibility that some expenses could have been incurred (70% of such expenses is treated as allowed). The addition of Rs 1906110 is treated as upheld as genuine expenditure."*

*emphasis added)*

3- BECAUSE in any case the expenditure incurred towards various heads being Advertisement and Publicity, Staff Welfare, Sales Promotion Expenses, Salary to staff were fully verifiable from the audited books of account and other records, entire expenditure claimed by the appellant towards business purposes deserves to have been allowed by the Id. CIT(A) in the appellate order dated 30.05.2024 passed by him.

4. BECAUSE, without prejudice to the aforesaid grounds, the disallowance of expenditure of Rs.19,06,110/- (70% of the overall expenditure claimed) sustained by the Id. CIT(A) is much too high and excessive.

5. BECAUSE the deposit of cash Rs.32,16,500/- in SBN in the bank account by the appellant on 11.11.2016 (i.e. after demonetization on 08.11.2021) were out of sale proceeds and collection from his customers, the Id. CIT(A) has erred in sustaining the addition made by the Id. Assessing Officer of the same under section 69A r.w.s. 115BBE of the Act as the book results having been accepted and trading results having not been disputed, deposits made by him out of available cash in the cash book on the date of deposit in bank books could not be adversely viewed and the same deserves to be deleted.

6. BECAUSE the deposits of Rs.32,16,500/- in bank account on 11.11.2016 by the appellant were out of regular books of account and from business activities, provisions of section 69A could not have been invoked by the Id. Assessing Officer as the same is not "unexplained money" as alleged by him and further the higher rate of taxation imposed on the basis of provisions of section 115BBE too is also erroneous, the Id. CIT(A) has erred in affirming the same in the impugned appellate order dated 30.05.2024 passed by him under section 250 of the Act.

7. BECAUSE the audited books of account having been accepted by the authorities below, no addition of Rs.32,16,500/- could have been made by the Id. Assessing Officer

*as also affirmed by the CIT(A) under section 69A of the Act, as the said deposits were out of available funds in the cash book on the date of deposit and income generated from such deposits also stood accepted during the year under consideration.*

*8. BECAUSE the appellant does not have any other source of income, other than the disclosed source of income over the period, the authorities below have erroneously treated the cash deposits during demonetization period as unexplained money of the appellant liable for taxation under section 69A read with section 115BBE of the Act.*

*9. BECAUSE the appellant has duly disclosed the cash deposits in his bank account in the return filed by him in regular course, the CIT(A) has erred in affirming the addition made by the Id Assessing Officer, who has treated the said deposits as unexplained money taxable under section 69A of the Act r.w.s. 115BBE of the Act, by erroneously observing that "the amount of deposits made in the bank accounts during demonetization period, represented income from undisclosed sources. The assessee has concealed its true income which otherwise is taxable".*

*WITHOUT PREJUDICE TO THE AFORESAID*

*10. BECAUSE the appellant was prevented from reasonable cause in putting up his appearance before the authorities below as the appellant owing who which no compliance could be made by the appellant during the appellate proceedings accordingly the impugned order passed by Id. CIT(A) deserves to be set aside.*

*11. BECAUSE the order appealed against, is contrary to facts, law and principles of natural justice."*

2. The facts of the case are that the assessee, who is an individual doing wholesale trading in Sugar, Edible Oil and Rice under the name and style of M/s Shivam Enterprises, filed a return of income for the A.Y. 2017-18 showing a total income of Rs.12,90,992/-. During the demonetization period, he deposited old currency notes amounting to Rs.32,16,500/- in his bank account on 11.11.2016. However, the Id. AO records that despite several notices issued to him, no replies were submitted by him. Therefore, the Id. AO issued two show cause notices to him on 3.12.2019 and 8.12.2019 and finally in response to these show cause notices, the assessee filed a reply on 12.12.2019. Among the issues on which show cause were served, were certain expenses which the Id. AO concluded that the assessee had

deliberately tried not to vouch. He recorded his conviction that it was customary in assessment orders, to disallow a percentage of certain expenses for different reasons. He then went on to rely on the daily observations of the staff of the Income Tax Officer, Maharajganj who, he said, were sure that the assessee works through daily wagers for loading and unloading of goods, and does not employ any staff. Besides this, he recorded his observation that the three expenses such as sales promotion, staff welfare and advertising and publicity had never been incurred. As the assessee did not submit any replies, he made a disallowance of Rs.27,23,015/- on this account holding the same to be ingenuine. The ld. AO also observed that the assessee had made the deposits of Rs.16,25,500/- in specified bank notes into his bank account on 10.11.2016 and Rs.32,16,500/- on 11.11.2016. While he accepted the deposit of Rs.16,25,500/- as explained on account of the fact that it was deposited on the first day after demonetization, he declined to accept the sum of Rs.32,16,500/-, as sales receipts and he added the same back to the income of the assessee under section 69A of the I.T. Act, 1961.

3. Aggrieved with these additions, the assessee went before the ld. CIT(A). The ld. CIT(A), in considering the reasons cited for disallowance of expenses, held that since the disallowances had been made on account of, 'common sensical knowledge' the reason could not be rejected in toto. Therefore, he stated that 30% of such expenses could be given as relief but he upheld 70% of the expenses as, 'genuine expenditure'. Thus, he sustained an addition of Rs.19,06,110/- despite labeling it as genuine. On the issue of Rs.32,16,500/- being treated as unexplained money under section 69A, the ld. CIT(A) noted that no evidence had been submitted by the assessee and therefore, section 69A was clearly attracted. Thereafter, relying on the judgment of the Hon'ble Supreme Court in the case of **Smt. Srilekha Banerjee And**

***Others vs. Commissioner Of Income-Tax, Bihar And Orissa*** reported in 1964 AIR 697, he confirmed the addition made by the ld. AO.

4. The assessee is aggrieved at dismissal of his appeal and has accordingly come in appeal before us. Shri. Ashish Bansal, Advocate (hereinafter referred to as the 'ld. AR'), appearing on behalf of the assessee, drew our attention to the satisfaction arrived by the ld. AO on the basis of the general observation of the staff of the Income Tax office, Maharajganj and pointed out that the ld. AO had neither indicated which person had made this observation, nor recorded any statement nor confronted any such observation to the assessee, which could be rebutted by way of cross examination or otherwise. In the circumstances, this was not a basis to make any disallowance. Furthermore, it was submitted that observation that sales promotion expenses, advertisement and publicity and staff welfare had never been incurred was just a bland statement, without any basis. It was submitted that the expenditure incurred towards various heads were fully verifiable from the books of accounts and other records, the entire expenditure claimed by the assessee was towards business purposes, and it ought to have been allowed by the ld. CIT(A). However, the ld. CIT(A) had sustained disallowance of Rs.19,06,110/-, without any basis whatsoever. With regard to the cash deposit of Rs.32,16,500/- on 11.11.2016, it was submitted that the deposit was out of sale proceeds and collection from customers and since the book results were accepted and trading results had not been disputed, the ld. AO was not justified in making this addition and the ld. CIT(A) was also unjustified in sustaining it. In any case, it was submitted that since the deposits had been made from regular books of accounts and business activities, the provisions of section 69A could not have been invoked as the same was not, 'unexplained money' but out of available funds in the cash book and the income generated from such deposits stood accepted during the year under consideration.

Furthermore, it was submitted that the assessee had duly disclosed the cash deposits in his bank account, in the return filed by him in regular course therefore, the ld. CIT(A) had erroneously observed that the amount of deposits made in the bank account during the demonetization period represented the assessee's income from undisclosed sources. Accordingly, he prayed that the additions may be quashed and the returned income of the assessee may be accepted.

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 non-compliant during both assessment and appeal proceedings and in the absence of any documentary evidence produced, the ld. AO had no option to treat the deposits as unexplained. He submitted that assessee's should not be rewarded for their non-compliance but should be asked to explain with reference to their books of accounts, the various deposits and expenditures incurred by them. He, therefore, prayed that the matter may be restored to the file of the ld. AO for re-consideration.

6. We have duly considered the facts and circumstances of the case. We have observe that the additions had been made by the ld. AO in a very cavalier fashion. The ld. AO has not indicated which staff of the Income Tax Office at Maharajganj has observed that the expenditures disallowed by him, had not been incurred. He has not recorded the statement of any of them and he has not confronted this statement to the assessee for rebuttal. In the circumstances, the addition is made without any basis other than the ld. AO's suspicions and conjectures. With regard to the disallowance of Rs.32,16,500/-, the ld. AO's stance seems to be contradictory to his own action in accepting deposits to the extent of Rs.16,25,500/- made on 10.11.2016. The mere fact that something was deposited on a day after the banks reopened, cannot be a ground to hold that they were not out of sales proceeds or collection from customers. Such facts had to be established after examination of

books of accounts and other claims of the assessee. We note the fact that the assessee has not made compliance before the ld. AO. It has been submitted that compliance could not be made because the notices were not served upon the assessee. Be that as it may, the assessee is under obligation to justify the claims of expenditure made by him in his return of income and explain why cash deposits made by him in the bank account, are explained. We, therefore, think it fit, in the interest of justice, to restore the matter back to the file of the ld. AO for a *de novo* assessment after consideration of any material that the assessee might produce before him in support of his claims or expenditure and deposits made by him during the demonetization period.

7. Since, the matter has been restored to the file of the ld. AO, the appeal of the assessee is held to be allowed for statistical purposes.

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

Orders pronounced on 27.12.2024 at Lucknow U.P.

**Sd/-**

**[SUDHANSHU SRIVASTAVA]  
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.