

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

**BEFORE SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER
AND NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

**I.T.A. No.98/Alld/2024
Assessment Year: 2017-18**

Rahul Sharma Gurhatt Bazar, Mukeri Bazar Mirzapur. [PAN:AVFPS4391C] (Appellant)	Vs.	ITO, Ward-3 (2), Mirzapur. (Respondent)
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Appellant by	Sh. S.K. Jaiswal, CA
Respondent by	Sh. A.K. Singh, Sr. DR

Date of Hearing	01.10.2024
Date of Pronouncement	14.11.2024

ORDER

Per: Udayan Das Gupta, JM

This appeal is filed by the assessee against the order of the Ld. CIT (A), NFAC, dated 25/07/2023, passed u/s 250 of the Act 61, which has emanated from the order of the ITO / Ward 3(2), Mirzapur, passed u/s 144 of the Act 61, dated 23/12/2019.

2. Condonation of delay:

It is pointed out by the registry that the appeal is belated by 260 days and the assessee has filed an application for condonation of delay , along with a sworn

affidavit, explaining the fact that the order of the Ld. CIT (A) has been uploaded in the portal on 25/07/2023, and the appeal was supposed to have been filed within sixty days i.e. by 23/09/2024, but unfortunately, the assessee could not keep track of the same because the registered email id of the assessee was recorded as ashok.mzp123@gmail.com, which belonged to his earlier counsel, who failed to appear and pursue the appeal by filing the written submission and by explaining the case . The assessee pleaded that he was totally unaware about the hearing notices in the portal and was never informed or intimated by his earlier counsel and was also unaware of the disposal of the appeal order exparte. On receipt of the recovery notices in respect of recovery of outstanding tax demand , (through speed post) from the office of the jurisdictional AO , he approached his present counsel sometime in the month of May 2024, who prepared and filed this appeal , along with necessary documentary evidences on 10th June, 2024, belated by 260 days , under email id shivkumar.co@gmail.com

3. On the basis of the above facts the assessee prayed that that there has been no intentional or willful default on his part and he has not obtained any benefit by filing the appeal late and on the other hand he has suffered mental agony and physical stress, for default of his appointed counsel, who failed in his professional duties, for no fault of his own, and he prayed for condoning the delay and for admitting the appeal so that it may be decided on merits. The Ld. DR, objected to

the admission of the appeal and submitted that on the facts of the case the delay should not be condoned, because there has been delay even after receipt of the recovery notice, as such assessee version cannot be accepted at face value.

4. We have considered the submissions and the materials on record, and we find that though the assessee has put forth a reasonable cause for the delay, but with a little care the said delay could have been avoided. However, in the interest of justice, we condone the delay and admit the appeal to be heard on merits.

5. The grounds of appeal preferred by the assessee in Form 36 are as follows:

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

2. BECAUSE the notices sent on registered email ID ashok.mzpl23(5)gmail.com and SMS alert, if any sent on registered Mobile No. 8545917777 has not come to the knowledge of the appellant for the reason that registered Mobile No. 8545917777 was surrendered and email ID ashok.mzpl23@gmail.com is not accessed by the appellant.

3. BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in making addition of Rs.19,89,500/- on account of cash deposited in the, Current Account No. 3866005500000081 with Punjab National Bank,

Mirzapur in the name of M/s Shri Ram Traders by invoking the provision of section 69A of the Income Tax Act, 1961 treating as unexplained money.

4. *BECAUSE the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining addition of Rs. 36,28,820/- by estimating net profit at the rate of eight percent of total credit entries in the Current Account No. 3866005500000081 with Punjab National Bank, Mirzapur by invoking the provision of section 69A treating as unexplained money and holding that bank account is in the name of Sri Ram Traders and business like transfer of money has been noticed.*

5. *BECAUSE the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that Current Account No. 3866005500000081 with Punjab National Bank, Mirzapur belongs to M/s Shri Ram Traders, proprietor Shri Ram Das Sharma father of appellant who is filling his return of income regularly and the aforesaid bank account is fully and truly recorded in the books of account of his proprietary concern M/s Shri Ram Traders.*

6. *BECAUSE the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that appellant is getting salary from M/s Shri Ram Traders. The PAN of the appellant has inadvertently been quoted in the bank account whereas substantive owner of the Current Account No. 3866005500000081 with Punjab National Bank, Mirzapur is*

Shri Ram Das Sharma duly disclosed by him in his return of income filed.

7. *BECAUSE the appellant denies levy of interest under section 234A and 234B of the Income Tax Act, 1961.*

8. *BECAUSE the order appealed against is contrary to the facts, law and principle of natural justice.”*

6. The brief facts of the case are that there has been a cash deposit of Rs. 19,89,500/- in the PNB A/c No : XXX 600550000081, Mirzapur Branch, during the demonetization period (9th November to 30th December 2016) and an amount of cash deposit of Rs.4,53,60,250/- in the same bank account , during the same financial year , (previous to the demo period), and the said bank account was a current account existing in the name of “ *Sri Ram Traders* ” ,and the said bank account was LINKED to the assessee PAN.

7. In absence of any return on record the AO initiated proceedings u/s 142(1) of the Act 61, calling for the return, and also by issue of show cause notice, and even though notices were issued vide registered speed post, on at least seven occasions (as per details contained in assessment order) , there has not been any compliance on the part of the assessee.

8. On the face of such repeated non-compliance by the assessee, the AO, determined the total income at Rs. 56,08,320/-, by adopting a rate of 8% on bank

credits of Rs.4.53 crores (excluding the demo period) at Rs. 36,28,820/- plus an addition of Rs. 19,89,500/- u/s 69A of the Act 61, being the alleged SBN deposited during demo period.

9. The matter was carried in appeal, and again in the absence of repeated noncompliance by the assessee, on at least five hearing notices issued from the office of the Ld. first appellate authority, in registered email id available in the portal, the Ld. CIT (A) NFAC, dismissed the appeal, by adjudicating the same on merits (as per para- 6 of the appellate order), in the absence of any written submissions and documentary evidences being filed before him.

10. Now, the assessee is before the tribunal, against the said order, on the grounds contained in the memorandum of appeal.

11. The Ld. AR of the assessee, in course of proceedings before the tribunal, filed a paper book containing 65 pages, and submitted that the entire assessment in the instant case has been completed on misconception of facts. He submitted that the assessee in the instant case (*Mr Rahul Sharma*), is just an authorised signatory of his father **Mr. Ram Das Sharma** in the said PNB bank A/c No: XXX 600550000081, Mirzapur Civil lines Branch, Mirzapur, and being the authorised signatory, his PAN is recorded and linked with this bank account and information has flown from the bank authorities against the said PAN to the income tax department, resulting in initiation of assessment proceedings against the assessee.

11.1 He further submitted that, the factual aspect of the matter is that. Mr. Ram das Sharma (father of the assessee) is the sole proprietor of the business *M/s SRI RAM TRADERS* , Gurhatti Bazar, Mirzapur, engaged in the business of wholesale trading of *Kirana and general goods* , and he is separately assessed to tax under PAN : AOKPS2571L , and has duly submitted his income tax return for the year under appeal , along with copies of audited accounts , balance sheet and tax audit reports , and maintains regular books of accounts of the business and the current bank account with PNB XXX 600550000081, (supra), is the business bank account of the proprietorship concern SRI RAM TRADERS, and all the bank account entries as reflected in the bank statements are duly, wholly and fully entered in the books of accounts of the proprietorship business and are records of business transaction of the father of the assessee Mr Ram Das Sharma , and has already been disclosed and assessed in his hands.

11.2 He further submitted that entire deposits in the said current bank account with PNB , during the entire FY (including the deposits during the demo period), are all recorded in the regular cash book of the proprietorship business and are fully explainable regarding its source of deposits to have come out of regular sales proceeds of the said business and is to be assessed in the hands of the father of the assessee (being the legal owner of the business), and has also been assessed as such in previous years.

11.3 In support of his arguments, the Ld. AR , referred to the documents contained in the paper book, being the bank statement issued by PNB, for the year under appeal in the name of the proprietorship concern, the audited financial statements , balance sheet for the year ended 31st March 2017 (and also for the earlier year 31st march 2016), and tax audit reports in form 3CB and 3CD, for both years, and copies of income tax return filing acknowledgment, of the father Mr. Ram Das Sharma with computation of income , for both years, and specially to the audited balance sheet for the year March 2016 and March 2017 (*placed in page 34 and page - 45 of the paper book , respectively*) to point out that the PNB current A/c , is duly reflected in the said balance sheet (*under head Cash and Bank balance*) and the closing balance of Rs. 81,008/- (page - 20 of PB) and Rs. 437/- (page -30 of PB) also matches with the balance reflected in bank statement, which proves that the said current account is a part of the regular books maintained in usual course of business.

12. As such he prayed that nothing is suppressed and nothing is concealed, by the assessee and the entire business activity of *Sri Ram Traders*, and its connecting bank account with PNB (supra), are disclosed and has been assessed in the hands of the legal owner Mr. Ram Das Sharma (father of the appellant), and should be considered as such. He further stated that the business is evidenced by UP/VAT

registration number and service tax registration number in the name of Mr. Ram Das Sharma.

13. He prays that the addition wrongly made in the hands of the assessee on mistaken assumption of facts, may please be deleted.

14. The Ld. DR, relied on the order of the Ld. CIT (A), but admitted that in the instant case proper enquiry and verification are needed, because, the factual aspects of the matter and the documentary evidences contained in the paper book, has been filed before the Tribunal, for the first time and the same needs to be verified.

15. We have heard the rival submissions and considered the materials on record including the paper book placed before us. From the face of the documents before us, it seems that the current bank account with PNB, Mirzapur, being A/c No XXX 600550000081, is the business account of the proprietorship concern M/s *M/s SRI RAM TRADERS*, Gurhatti Bazar, Mirzapur, whose sole proprietor is Mr. Ram Das Sharma (PAN: AOKPS2571L), and the entries in such bank statements, including cash deposits in the said account, (including deposits during the demo period), needs to be verified by the AO vis a vis the entires in regular Cash book, before arriving at any conclusive findings, in respect of its source, stated to have come out of regular business sale proceeds. Moreover, the documents contained in this paper book has never been filed before the AO and the first appellate authority, which needs verification.

16. As such, we find it proper to set aside the matter back to the files of the AO, to verify and cause enquiry as per provisions of law, and on being satisfied, regarding the contents and the authenticity of the documents, to pass fresh assessment orders accordingly.

17. In the result, the appeal of the assessee bearing **ITA No. 98/Alld/2024** is allowed for statistical purposes.

Order pronounced in the open court on 14.11.2024 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-

(NIKHIL CHOUDHARY)
Accountant Member

Sd/-

(UDAYAN DAS GUPTA)
Judicial Member

AKV

Copy of the order forwarded to:

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

True Copy
By order