

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA (SMC) BENCH, AGRA**

BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 68/Agr/2024
Assessment Year: 2017-18**

Jagvir Singh Kuntal, 1113, Palidungara, Sonkh Road, Mathura-281123, U.P.	Vs.	Income-tax Officer, Ward 1(3)(2), Mathura. U.P.
PAN : ALAPK4700A		
(Appellant)		(Respondent)

Assessee by	Sh. Anurag Sinha, Advocate
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	12.12.2024
Date of pronouncement	09.01.2025

ORDER

This appeal in ITA No.68/Agr/2024 for the assessment year 2017-18 has arisen from the appellate order dated 21.12.2023(DIN & Order No. ITBA/NFAC/S/250/2023-24/1058966655(1)), passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which, in turn, has arisen from the assessment order dated 16.12.2019 passed by Assessing Officer u/s. 144 of the Income-tax Act, 1961.

2. Brief facts of the case are that the assessee filed its return of income on 21.03.2018, declaring income of Rs.2,99,790/-. Case of the assessee was selected by Revenue for framing scrutiny assessment under CASS for the reason "large cash deposits compared to returned

income". Statutory notices u/s. 143(2), 142(1) and 144 of the Act were issued by the Assessing Officer during the course of assessment proceedings. There was no compliance by the assessee. The Assessing Officer invoked provisions of section 69A of the Act. The Assessing Officer observed that the assessee has deposited total cash of Rs.50.12 lakhs in the bank account during the year under consideration and from 01.04.2016 till 08.11.2016, total cash of Rs.34,22,200/- was deposited by the assessee in the bank account and during the period 01.01.2017 to 31.03.2017, assessee has deposited cash of Rs.7,61,300/- in the bank account and during demonetization period, the assessee has deposited cash of Rs.8,28,500/- in his bank account No. 85263070001056. The Assessing Officer accepted Rs.,1.20 Lakh cash deposit during demonetization as genuine. Assessee could not explain the source of cash deposits of Rs.7,08,500/- during demonetization and the same was brought to tax by the Assessing Officer u/s. 69A of the Act. Assessing Officer observed that the assessee could not explain the source of cash deposit to the tune of Rs.43,03,500/-, on which the Assessing Officer computed profit @ 8% and brought to tax the income of Rs.3,44,280/- in the hands of the assessee.

3. Aggrieved, the assessee filed first appeal with Id. CIT(Appeals). CIT(Appeals) dismissed the appeal of the assessee *ex parte in limine* without deciding the issue on merits on the ground that the assessee has failed to substantiate its claim with documentary evidence like acknowledgement of notice reply, bank statement etc. Learned CIT(Appeals) noted the contentions of the assessee from the statement of facts/grounds of appeal that the assessee filed its reply before Assessing Officer during scrutiny proceedings also that the assessee has not deposited any cash in his bank account and the cash deposit does not belong to any of the bank accounts maintained by the assessee, but due to lack of evidence, learned CIT(Appeals) dismissed the appeal of the assessee.

4. Aggrieved, the assessee filed second appeal with the Tribunal and the Id. Counsel at the outset submitted that this appeal is delayed by three days and the assessee has duly filed condonation application and affidavit. It was submitted that the assessee belongs to rural background and was not aware of strict compliance of filing of appeal with the Tribunal. Ld. Counsel relied upon decision of Mumbai ITAT in case of Angela J. Kazi vs. ITO (2006) 10 SOT 139 (Mum). He has also relied upon the decision of Hon'ble Supreme Court, Collector, Land Acquisition vs. Mst Katiji & Ors. (1987) 167 ITR 471 (SC) and

the decision of Hon'ble Allahabad High Court in the case of Auto Centre vs. State of U.P. & Ors. (2005) 278 ITR 291 (All). Ld. Counsel for the assessee prayed that the delay of three days be condoned. Ld. Sr. DR has no serious objection to the condonation of delay. After considering the contentions of both the parties, I am of the view that the delay of 3 days needs to be condoned in the instant case. If substantial justice and technical considerations are pitted against each other, Courts will lean towards advancement of Substantial Justice, unless mala fide is at writ large. I do not find any mala fide on the part of the assessee in filing this appeal belatedly before the Tribunal beyond the time prescribed. The assessee is not likely to gain by filing this appeal belatedly with ITAT by 3 days. I, therefore, condone the delay of 3 days in filing of this appeal belatedly by the assessee beyond the time prescribed u/s. 253(3) of the Act. Reliance is placed on the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag & Ors. vs Mst. Katiji & Ors. (supra). Thus, I condone the delay in filing this appeal and proceed to decide the appeal on merits. I order accordingly.

5. On merits, Ld. Counsel at the outset submitted that the Assessing Officer has passed best judgment assessment u/s. 144 of the Act. Notices u/s. 143(2) and 142(1) were issued by the Assessing

Officer during the course of assessment proceedings. Case was selected for scrutiny on the ground of larger cash deposit in the bank account. It was also submitted that the bank statement were enclosed along with appeal filed with Id. CIT(Appeals) to justify that no cash was deposited in the bank account of the assessee. It was submitted that the order of CIT(Appeals) is ex parte in limine without deciding the issues arising in the appeal on merits. He drew my attention to para 3 & 4 of the CIT(Appeals)'s order. It was also submitted that the assessee filed online reply before Assessing Officer during assessment proceedings on 02.10.2018 and 05.12.2019, but the same was not taken into cognizance by Assessing Officer. It was submitted that no remand report was called by the Id. CIT(Appeals) and it was an ex parte order.

5.2 Ld. Sr. DR submitted that it was an ex parte order passed by Ld. CIT(Appeals) without adjudicating the appeal on merits.

5.3 Ld. Counsel in rejoinder submitted that no enquiry was made by the Assessing Officer. Simply, the addition was made.

6. I have considered rival contentions and perused the material on record. I have observed that the case of the assessee was selected for framing scrutiny assessment on the ground of large cash deposits in the bank account. During the course of assessment proceedings,

notices u/s. 143(2), 142(1) and 144 were issued but no compliance was made by the assessee. The assessee has disputed the same and claimed to have submitted replies before the Assessing Officer during scrutiny proceedings on 02.10.2018 & 05.12.2019. Before CIT(Appeals), the assessee has categorically stated that there was no cash deposit in the bank account of the assessee and as per form No. 35 placed on record, the assessee has filed bank statement with the Revenue. Notices issued by Id. CIT(Appeals) were also not complied with by the assessee. Learned CIT(Appeals) dismissed the appeal of the assessee ex parte in limine without deciding the issues arising in appeal on merits. Ld. CIT(Appeals) did not make any enquiry with respect to claim of the assessee that the assessee has not deposited any cash in bank account. The assessee has claimed that the bank statement was filed by the assessee before the CIT(Appeals) along with Form-35. Ld. CIT(Appeals) did not call for assessment records before adjudicating appeal of the assessee nor call for the remand report from the Assessing Officer. I observe that the Id. CIT(Appeals) has not decided the appeal on merits. The Id. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as Id CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The appellate order passed by Id.

CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of Id. CIT(A) in deciding the issues. If the Id. CIT(A) simply dismisses the appeal merely because the assessee did not comply with the notices issued by Id. CIT(A) *in limine* without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits . The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely stating the assessment order passed by AO is upheld, and that the assessee has not submitted details/documents is

not sufficient. The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO, which even includes power of enhancement. It is equally true that the assessee also did not comply with the notices issued by Id. CIT(A) and did not file the requisite details/documents to support his contentions. Thus, the assessee is equally responsible for its woes. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) is set aside. It is also observed that the claim is made by the assessee that the assessee filed its replies on 02.10.2018 and 05.12.2019 before the Assessing Officer during the assessment proceedings but they were ignored by the Assessing Officer while framing ex parte assessment u/s. 144. The case was selected for framing scrutiny assessment under CASS on the ground of large cash deposit in the bank account but the assessee has denied that there was no cash deposit by the assessee in its bank account. Bank statement was filed before the CIT(Appeals) also. Thus, the whole edifice of selection of the case for scrutiny by Revenue is under challenge by the assessee and thus, it will be fit and appropriate to set aside the assessment order and the matter can go back to the file of Assessing Officer for framing fresh assessment *de*

novo in accordance with law. I clarify that I have not commented on the merits of the issues in appeal. I order accordingly.

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

Order pronounced in the open court on 09/01/2025.

**Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 09/01/2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra