

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

BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 71/Agr/2024
Assessment Year: 2017-18**

Sourabh Kumar Soni, Ward No.1, Near FCI Gowdown, Isagarh Road, Durga Colony, Ashoknagar-473331 Madhya Pradesh.	v.	Income-tax Officer, Ashoknagar-473331 Madhya Pradesh
PAN :EIEPS0396P		
(Appellant)		(Respondent)

Assessee by	S/Sh. Rajendra Sharma, Manuj Sharma, Adv. & Ms. Ayushi Pareek, Adv.
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	12.12.2024
Date of pronouncement	27.01.2025

ORDER

This appeal in ITA No. 71/Agr/2024 for the assessment year 2017-18 has arisen from the appellate order dated 28.12.2023 [DIN & Order No.ITBA/APL/S/250/2023-24/1059147191(1)], passed by learned ADDL/JCIT(A)-7, Kolkata, which, appeal in turn has arisen from the assessment order dated 21.12.2019 passed by Assessing Officer u/s. 144 of the Income-tax Act, 1961.

2. Grounds of appeal raised by the assessee in the Memo of Appeal filed with ITAT, Agra Bench, Agra, reads as under :

1. That the Ld. CIT(A) has erred in passing an order and dismissing the grounds of appeal filed by the assessee without considering the reply filed by the him

2.The Ld. CIT(A) has erred in considering that the original assessment was started based on cash deposit during the demonetisation period and at no point the AO has asked any questions regarding the cash deposits made before or after the demonetisation drive in that particular financial year.

3. That the Ld. CIT(A) has erred in stating in his order u/s 250 that the assessee has only submitted only the bank statement and no other proof which is clearly Incorrect. The assessee has attached the Bank statements, reconciliation of the bank statement with the deposited made during the demonetisation period, copy of statement of MP Online and the assessee has In point no 5,6,7 of the submission stated the point-to- point source of deposit made by him.

4.That the Ld. CIT(A) erred in passing the order stating that "Appellant is responsible for explanation of cash deposit made into his accounts throughout the year" in response to the contention that money deposited on 08/11/2016 should be treated differently as the Ld. AO has specifically asked about the cash deposited during the demonetisation period only. There was no question asked about the cash deposited at any time other than the demonetisation period. Therefore, rejecting the ground raised is clearly wrong and bad in law.

5That the Ld. CIT(A) erred in passing the order stating that the jurisdiction get automated during the APN allocation, with correction in address of the appellant his ITR/reorganization of assessment unit, jurisdiction charges. This contention given by the CIT(A) is clearly wrong as the address of the assessee was never changed by him. And the Ld AO was bound to pass a statutory order u/s 127 r.w.s 129 before transferring the jurisdiction of the assessee, which he didn't pass, making the proceedings void and bad in law.

6.That the Ld. AO and then after the CIT(A)erred in treating the entire income taxable under section 115BBE and wrongly charged tax @ 60 on the entire income even though the assessee has explained that he earned around 120000 during the year from the Kiosks and other computer work. And he has deposited the extra money of Rs. 51518 (1037500- 985982) out of the same earning of Rs. 120000/-only. But the Ld. AO and later the CIT(A) refused to accept the same and added

the same income twice in calculating the taxable income of the assessee which is clearly wrong and lead to double taxation of income earned by the assessee.

7. That the Ld CIT(A) erred in understanding that the case of the assessee was originally reopened because of the cash deposited during the demonetisation period and the Ld. AO had mistakenly calculated the amount deposited during the demonetisation as Rs. 1251500/- which in originality was Rs. 1037500 only. The Ld AO in his order accepted that Rs. 9,85,982 was deposit out of money from M.P Online Kiosk only. So the assessee has deposited only Rs. 51518 (1037500-985982) extra, which is from the Rs. 120000 earned by the assessee from the typing and other computer work. The whole assessment and addition framed by the Ld. AO was on the basis that Rs. 1251500 was deposited during the demonetisation period and the Ld AO has deducted Rs,985982 from the same owing to the linkage to MP Online kiosk and treating the rest Rs. 265518 (1251500-985982) as unexplained income but actuality the figure of 1251500 was 1037500 and only Rs. 51518 extra was deposited, that too was explained as the part of saving and income earned during the year of Rs. 120000.

8. The assessee further craves to add, alter or amend the aforesaid grounds as when necessary.”

2.2 The assessee has also raised following additional grounds of appeal before Income-tax Appellate Tribunal :

“9. That the decision given by NFAC in the appellate order as "dismissed" is not correct being against the addition at Rs.3,85,518/- made, invoking the provisions of Section 68 read with Section 115BBE of the Income Tax Act, the NFAC has sustained Rs.2,65,518/-, relief Rs.1,20,000/-. The decision given as "dismissed" is not correct, same is to be "partly allowed."

10. That the provisions of Section 68 of the Income Tax Act could only be invoked on the amount "exceeded the taxable limit", the income assessed upto the taxable limit even unexplained cannot be charged to tax. Provisions of Section 115BBE of the Income Tax Act could only be invoked over and above the income taxable limit, the income assessed below taxable limit cannot be charged to tax even under Section 115BBE of the Income Tax Act, same is liable to be charged on the income above taxable limit.

11. That the provisions of Section 68 of the Income Tax Act are not attracted in the case of assessee, the deposit made with the bank

accounts cannot be charged to tax invoking the provisions of Section 68 of the Income Tax Act."

It is requested that the above grounds now being taken as additional legal grounds No. 9,10 and 11 may kindly be admitted and obliged."

3. Brief facts of the case are that as per information available with the Assessing Officer on AIMS Module of ITBA, it was observed by the Assessing Officer that during the course of demonetization period from 09.11.2016 to 30.12.2016, the assessee has made cash deposits as under :

Cash deposit : Rs.6,49,150/- (A/c 30765776795)
Cash deposit : Rs.6,02,350/- (A/c 34996900073)
Bank Name : State Bank of India, Ashoknagar.

3.2 Notice u/s. 142(1) of the Act was issued by the AO to the assessee on 13.03.2018. The assessee did not file any return of income within time allowed u/s. 142(1) of the Act. Further, show cause notice(SCN)dated 28.06.2019 was issued by the AO u/s. 142(1) of the Act to the assessee, asking the assessee to explain the source of cash deposits in the bank accounts. The assessee submitted that during demonetization period, the assessee has deposited total of Rs.12,51,500/- in the saving bank account and current account, out of which Rs.9,85,982/- were deposited through M.P. Online for the payment of fees and remaining amount of Rs.1,80,000/- was the savings of assessee's parents which was deposited in assessee's bank account during demonetization period

while Rs.85,518/- was his savings which was also deposited in his bank account. Assessee explained that the assessee is engaged in the business of M.P. Online Form Center and Photostat business, and earned approximately Rs.1,20,000/-, which is below taxable limit. The Assessing Officer observed that the assessee has deposited Rs.16,03,053/- in his account No. 30765776795 maintained with State Bank of India, Mandi Road, Ashoknagar and Rs.22,54,789/- in his bank account No. 34996900073 maintained with State Bank of India, Mandi Road, Ashoknagar. The Assessing Officer accepted the contention of the assessee with respect to the claim that the assessee is engaged in the business of M.P. online Form Centre Kiosk, and cash amount of Rs.9,85,982/- out of Rs.12,51,500/- deposited in his bank account during demonetization period are verifiable, but so far as the claim of the assessee of Rs.1,80,000/- and Rs.85,518/- being deposited in his bank account during demonetization period out of saving of his parents and his own savings respectively, were not accepted by the Assessing Officer and the same were brought to tax by the AO, as in view of the Assessing Officer, the documents submitted and the answer supplied were not satisfactory. Thus, the aggregate amount of Rs. 2,65,518/- was brought to tax by the AO in the hands of the assessee being unexplained money u/s 69A of the 1961 Act. Since the assessee did not file any return of

income, the income shown by the assessee in his reply of Rs.1,20,000/- as well aforesaid addition of Rs. 2,65,518/- were brought to tax by the AO, and the income assessed was to the tune of Rs. 3,85,518/- in the hands of the assessee.

4. Aggrieved, the assessee filed first appeal with learned CIT(Appeals), but without success as the assessee merely submitted bank statement and did not submitted any evidence with regard to aforesaid deposits. Thus, the appeal of the assessee stood dismissed by the Id. CIT(A) and the assessment order was upheld by learned CIT(A). In its appeal before Id. CIT(A) in statement of fact submitted that the assessee deposited Rs. 10,12,500/- in cash in his bank account and not Rs. 12,51,000/- as stated by the AO during demonetization period. It was submitted that Rs. 2,13,500/- was deposited in cash in assessee's bank account on 08.11.2016 which was not deposited during demonetization period. The above amount was deposited out of money collected of Rs. 1,80,000/- by his father from various students for deposits of fee to Jiwaji University before 08.11.2016 and balance amount was his past savings and current collection. The Id. CIT(A) proceeded on the assumption that Rs. 1,80,000/- was the savings of his parents while Rs. 85,518/- was sought to be explained by the assessee to be his past savings. The Id. CIT(A) dismissed the appeal of the assessee.

5. Still aggrieved, the assessee has filed second appeal with ITAT and the ld. Counsel for the assessee at the outset submitted that the assessee has taken additional grounds of appeal bearing Nos. 9, 10 & 11, which should be admitted. Ld. Counsel for the assessee submitted that the assessee did not file return of income as the income was below taxable limit . The assessee's income was Rs.1,20,000/- from the business of M P Online Center(Kiosk) and photostat. The assessee has not filed return of income, and this income of Rs. 1,20,000/- was declared during the course of assessment proceedings before the AO. There were two additions made by the Assessing Officer. It was also submitted that the assessee was having old savings of Rs.85,518/- and also an amount of Rs.1,80,000/- was given by the parents out of their past savings, which was deposited in cash in the bank account of the assessee during the period of demonetization . The assessee is running a Photostat Centre and also M.P. Online form Centre (Kiosk). The Assessing Officer has accepted the income of the assessee from MP Online Form Centre and Photostat Centre, and no addition were made. It was submitted that the provisions of section 68 was invoked by the AO, and the total income was brought to tax to the tune of Rs.3,85,518/- as cash credits u/s 68 and the same were brought to tax by applying Section 115BBE. It was submitted that these additions were not warranted and the assessee has

given proper submissions before the authorities below, which were arbitrarily rejected by the authorities below. The Id. Counsel for the assessee also relied upon Instructions No. 3/2017(F.No.225/100/2017/ITA-II) dated 21.12.2017 issued by the Revenue and it was submitted that the additions be deleted.

5.2 Learned Sr. DR, on the other hand, relied upon the orders of the authorities below. Ld. Sr. DR submitted that the Assessing Officer has rightly made additions to the tune of Rs.2,65,518/-, which were later affirmed by Id. CIT(Appeals).

6. I have considered rival contentions and perused the material on record. I have observed that the assessee is engaged in running MP online Form Center(Kiosk) and Photostat business. Assessee has not filed return of income u/s 139. As per information available with the AO on AIMS Module of ITBA, it was observed by the AO that the assessee deposited cash in his bank accounts during demonetization period from 09.11.2016 to 30.12.2016, detailed as under :

Cash deposit : Rs.6,49,150/- (A/c 30765776795)
Cash deposit : Rs.6,02,350/- (A/c 34996900073)
Bank Name : State Bank of India, Ashoknagar.

6.2 The AO issued notice u/s 142(1) dated 13.03.2018 to the assessee to file his return of income. The assessee did not file return of income in

pursuance to notice issued by the AO u/s 142(1) also. SCN u/s 142(1) was also issued by the AO to the assessee for explaining sources of cash deposits. Case of the assessee was selected by Revenue for framing scrutiny assessment on account of cash deposits in the bank account. Assessee participated in the assessment proceedings. The assessee gave explanation with respect to the cash deposits made by the assessee to the tune of Rs. 9,85,982/- out of Rs. 12,51,500/- , being out of income from M P Online Center(Kiosk) and Photostat, which explanation was accepted by the Assessing Officer after considering the explanation given by the assessee after making due verifications. This is now disputed by the assessee as it is claimed by assessee that Rs. 10,12,500/- was deposited in cash during demonetization period and not Rs. 12,51,500/- as stated by authorities below. The assessee had claimed during assessment proceedings that the assessee has earned income of Rs.1,20,000/- from Photostat as well as MP online Form Kiosk, which was brought to tax by the Assessing Officer. The assessee had not filed return of income. There is no grievance of the assessee so far as this income of Rs.1,20,000/- which was brought to tax by the AO except that the same was brought to tax u/s 115BBE as the addition was made by the AO u/s 68. The AO has accepted the income from M P Online Center and Photostat , and thus there is no justification in bringing to tax

this income of Rs. 1,20,000/- u/s 68 at the rates prescribed u/s 115BBE. Although , no return of income was filed by the assessee but AO has accepted the claim of the assessee to be engaged in M P Online Center(Kiosks) and Photostat which business as per AO were verifiable, and the income offered to taxation of Rs. 1,20,000/- by the assessee from these business which stood accepted by the AO, cannot be brought to tax u/s 68 and hence Section 115BBE cannot be applied. I order accordingly.

6.3 Proceeding further, the Assessing Officer has made two additions to the income of the assessee in the assessment framed u/s 144, firstly Rs.1,80,000/- on account of cash deposits in the bank accounts during the demonetization period, for which the assessee has given explanation that firstly this amount was not deposited during demonetization period and secondly these were the amounts collected by his father from various students for deposit of fees to Jiwaji University before 08.11.2016 but both the authorities below treated this amount of out of past savings of his parents, which were given to the assessee in the form of cash, and which stood deposited by the assessee in his bank account during demonetization period. Initially, the assessee gave explanation that these amounts were deposited out of past savings of his parents, but later changed the stance in Form No. 35 and also in Form No. 36 filed with

ITAT. Thus, there are disputed facts. Thus, both the authorities below have passed orders based on mistaken facts and hence orders are erroneous, if contentions of the assessee is to be accepted. This requires fresh investigation of facts . Under these facts and circumstances and in the interest of justice, the orders of authorities below are set aside and matter is restored to file of the AO for denovo assessment, after giving proper opportunity of being heard to the assessee. The assessee is directed to duly comply with the directions of the AO during denovo assessment .. I clarify that I have not commented on the merits of the issue. I order accordingly.

6.5. Proceeding further, it is also observed that both the authorities passed the order against the assessee by disbelieving the alleged contentions of the assessee that Rs.85,517/- was the cash deposits during demonetization out of his past savings, but however, the assessee has averred that the differential amount of cash deposits during demonetization was Rs. 51,518/- and not Rs. 85,517/- and the same was sought to be explained being out of income of Rs. 1,20,000/- declared by the assessee before the AO during assessment proceedings from M P Online Center(Kiosk) and Photocopy business. Initially , the assessee stated before the AO that this amount was deposited out of past savings , but later changed stance in Form No. 35 and Form No.

36.Thus, there are disputed facts. Thus, both the authorities below have passed orders based on mistaken facts and hence orders are erroneous, if contentions of the assessee is to be accepted. This requires fresh investigation of facts . Under these facts and circumstances and in the interest of justice, the orders of authorities below are set aside and matter is restored to file of the AO for denovo assessment, after giving proper opportunity of being heard to the assessee. The assessee is directed to duly comply with the directions of the AO during denovo assessment .I clarify that I have not commented on the merits of the issue. I order accordingly.

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

Order pronounced in the open court on 27/01/2025.

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

Dated: 27/01/2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra