

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

BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA No. 63/Agr/2021
Assessment Year: 2017-18**

Mr. Pradeep Kumar, Vishal Cinema Road, Padav Bazar, Karhal, Mainpuri(UP)-205264.	v.	Income-tax Officer, Ward 4(2)(5), Mainpuri.
C/o M/s. Sanjeev K Gupta & Co., 2/327A, Niranjapur, Near 3 Dots School, Ramghat Road, Aligarh-202001, U.P.		
PAN : AQMPK2729A		
(Appellant)		(Respondent)

Assessee by	Sh. Pankaj Gargh, Advocate
Revenue by	Shri Shailendra Srivastava, Sr. DR

Date of hearing	30.01.2025
Date of pronouncement	07.02.2025

ORDER

This appeal in ITA No. 63/Agr/2021 for the assessment year 2017-18 has arisen from the appellate order dated 29.07.2021 [DIN & Order No. ITBA/NFAC/S/250/2021-22/1034495235(1)], passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which appeal in turn, has arisen from the assessment order dated 26.11.2019 passed by Assessing Officer u/s. 143(3) of the Income-tax Act, 1961.

2. Grounds raised by the assessee in memo of appeal filed before the Income Tax Appellate Tribunal, Agra Bench, Agra, reads as under :

“1. That the appellant denies its liability to be assessed at total income of Rs. 7,46,080/- after the appeal partly allowed by CIT(Appeals) as against the declared income of Rs. 2,96,080/-and accordingly denies its liability to pay tax, cess and interest demand thereon.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law as well as on facts and passed the appellate order u/s 250 of the Income Tax Act, 1961 partly confirming the additions u/s 69A of the Income Tax Act without considering the written submissions and supporting evidence uploaded on Income Tax Portal and also denied an opportunity of being heard as requested by the assessee and hence, natural justice has been denied.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and as well as on facts in partly allowing the appeal arbitrarily and on ad-hoc basis, without adjudication all the ground of appeal separately and without a speaking order.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and as well as on facts in confirming the action of Ld. AO of making an addition of Rs. 5,00,000/- under section 69A of the IT Act, of the money received through banking channels by travelling beyond jurisdiction granted of "Examining Cash deposited during Demonetisation Period" under (CASS) for limited scrutiny hence addition made without jurisdiction is null and void.

5. Without prejudice to the above, the Ld CIT(A) has erred in law and as well as on facts in confirming the action of Ld. AO in making an addition of Rs. 5 Lacs as Unexplained money u/s 69A of the IT Act ignoring the evidence submitted by the Appellant that the money has been received back from M/s Shyam Construction through Banking Channel which was given to them earlier on 04.2.2016 through Banking channels.

6. That the appellant craves leave to add, amend, alter, modify or delete any or all of the grounds of appeal before or at the time of hearing.”

3. Brief facts of the case are that the assessee filed return of income on 13.05.2017 ,declaring income of Rs.2,96,080/-. Case of the assessee was selected for framing **limited scrutiny assessment** under CASS for

the reasons the assessee has deposited substantial cash during the demonetization period as compared to returned income. Statutory notices u/s. 143(2) and 142(1) were issued by the AO to the assessee during the course of assessment proceedings. The assessee participated in assessment proceedings. Assessing Officer observed during the course of assessment proceedings that the assessee has deposited cash of Rs.22 lacs in bank account No. 72010100007376 maintained with GBA(Aryavart Bank) Karhal during the demonetization period. Assessing Officer further observed that the amount of Rs.5 lacs has been credited in bank account No. 1561010010876 with United Bank of India, Etawah on 18.04.2017. The assessee was asked by the Assessing Officer to explain the nature and source of above cash deposits and credit entries with the supporting evidence. There were part replies filed by the assessee, which led the Assessing Officer to issue notice u/s. 142(1) dated 18.11.2019 granting final opportunity to the assessee, and it was proposed to make additions to the tune of Rs.22 lacs of the cash deposited in bank account with Gramin Bank of Aryavart,Karhal during the demonetization period u/s. 69A and further it was proposed to make addition of Rs.5 lacs with respect to amount of Rs.5 lacs being credited on 18.04.16 in bank account No. 1561010010876 maintained by the assessee with United Bank of India, Etawah by invoking the provisions of section 69A of the Act.

The assessee did not file any reply to the aforesaid final notice u/s. 142(1) and the Assessing Officer observed that total amount of Rs.22,00,000/- has been deposited in cash during the demonetization period with Gramin Bank of Aryavart, Karhal, Mainpuri of which nature and source of cash deposit could not be explained by the assessee. The Assessing Officer issued letter to the Branch Manager of Gramin Bank of Aryavart, Karhal on 27.09.2019, and the bank replied vide letter dated 14.10.2019 that the assessee has deposited only 200 notes of denomination of 1000/- and hence, only Rs.2,00,000/- has been deposited during the demonetization period(09.11.2016 to 30.12.2016). Bank enclosed copies of deposit slips and also stated that an amount of Rs.20,00,000/- has been wrongly entered and accordingly reverse entry was passed. Thus, the Assessing Officer made addition of Rs.2,00,000/- as unexplained money by invoking the provisions of section 69A of the Act towards unexplained cash deposits during the demonetization period in the bank account maintained with Gramin Bank of Aryavart, Karhal, Mainpuri. Further, the Assessing Officer made addition of Rs.5,00,000/- on account of credit in the bank account maintained by the assessee with United Bank of India, Etawah bearing number 1561010010876 wherein there was a transfer entry of Rs.5 lacs on 18.04.2016. Since the nature and source of the credit entry

could not be explained by the assessee, the Assessing Officer invoked provisions of section 69A of the Act.

4. Aggrieved, the assessee filed first appeal with the Id. CIT(Appeals). The assessee submitted part replies along with supporting evidences, but Id. CIT(Appeals) observed that the submissions and evidences of the assessee were not found with the reply of the assessee. Assessee relied upon Instruction No. 03/2017 of the CBDT to be followed by the Assessing Officer in verification of cash transactions during the demonetization period and Instruction No. 07/2014 as well decisions of ITAT, but the Id. CIT(Appeals) was not satisfied with the contentions of the assessee. However, Id. CIT(Appeals) granted relief of Rs.2.5 lacs to the assessee with respect to cash deposit during the demonetization period by accepting that Rs.2.5 lacs deposit was out of past savings of the assessee. The Id. CIT(A) confirmed the addition of Rs. 4,50,000/-.

5. Still aggrieved, the assessee has filed appeal with the Tribunal. However, it could not be shown that the Revenue is aggrieved with the learned CIT(Appeals)'s order as no appeal/cross objection has been filed by the Revenue against part relief granted by the Id. CIT(Appeals) and hence, the decision of CIT(Appeals) has become final and binding on the Revenue as it has attained finality so far as Revenue is concerned. Ld. Counsel for the assessee drew my attention to the paper book filed by the

assessee. Ld. Counsel submitted that the case of the assessee was selected for framing limited scrutiny assessment on the ground that there was cash deposits during the demonetization period. Initially, the Assessing Officer was of the view that the assessee has deposited Rs.22 lacs in cash in the bank account maintained by the assessee with Gramin Bank of Aryavart, Karhal, Mainpuri during demonetization period, but actually Rs.2,00,000/- was deposited in cash by the assessee in his bank account during the demonetization period, as there was error on the part of the bank wherein credit entry of Rs.20 lacs was reflected in the bank account of the assessee erroneously, which error was reversed by the bank itself to correct the error. The bank has stated this fact in its reply filed before the Assessing Officer in response to direct enquiry made by the Assessing Officer with the bank. Only the addition of Rs.200000/- was made by the Assessing Officer on the ground of unexplained cash deposits in the bank account with Gramin Bank of Aryavart, Karhal by the assessee during the demonetization period, and the learned CIT(Appeals) has already granted relief of Rs.2.5 lacs with respect to cash deposits during the demonetization period being accepted out of past savings of the assessee. Ld. Counsel submitted that only addition of Rs.4.5 lacs has been confirmed, which also could not be sustained as in fact the addition of Rs.5,00,000/- has been made by the Assessing Officer

on account of unexplained credit entry in United Bank of India, Etawah. At the outset, Id. Counsel for the assessee submitted that the Assessing Officer has exceeded its jurisdiction because the case of the assessee was selected for framing limited scrutiny under CASS to verify the cash deposited during the demonetization period. This amount of Rs.5 lacs was credited on 18.04.2016 in the bank account maintained with United Bank of India and it was not cash deposited, but it was a transfer from M/s. Shyam Construction through banking channel. The assessee had given an amount of Rs.5 lacs to Shyam Construction in immediately preceding year on 04.02.2016 through United Bank of India (bank account number 1561010010876), which was returned by Shyam Construction on 18.04.2016 by way of transfer through banking channel. Copy of bank statement is filed by the assessee of United Bank of India is placed on record along with certificate issued by M/s. Shyam Construction confirming that they have taken Rs.5 lacs from the assessee vide cheque No. 914587 on 04.02.2016, which was returned on 18.04.2016 by said Shyam Construction through RTGS. Copy of PAN of the proprietor of said firm Shyam Construction is also placed on record. On legal ground, It is submitted that the Assessing Officer has exceeded the jurisdiction by making addition on account of deposit of Rs.5 lacs, which was not cash deposit, but it was return of loan by Shyam Construction through bank

transfer.. Attention was drawn to the Instruction No. F. No. 225/402/2018/ITA.II dated 28.11.2018. Thus, it was submitted that the order of the Assessing Officer and CIT(Appeals) is liable to be quashed on this ground itself.It was prayed that the addition made by the Assessing Officer be deleted both on merits of the additions as well on legal ground.

5.2 Learned Sr. DR, on the other hand, submitted that during the demonetization period, there was no circular for expanding Scope of limited scrutiny and prayer was made to set aside the matter to the file of Assessing Officer for fresh enquiry.

6. I have considered rival contentions and perused the material on record. I have observed that the assessee filed return of income on 13.05.2017 declaring income of Rs.2,96,080/-. Case of the assessee was selected for framing **limited scrutiny assessment** under CASS for the reasons that the assessee has deposited substantial cash during demonetization period as compared to returned income. Statutory notices u/s. 143(2) and 142(1) were issued by the Assessing Officer to the assessee during the course of assessment proceedings. The assessee participated in assessment proceedings and submitted part replies. The Assessing Officer made two additions – firstly of Rs.2 lacs on account of unexplained cash deposits in account No. 72010100007376 maintained

with Gramin Bank of Aryavart, Karhal, Mainpuri during the demonetization period. As per information captured by SFT, there was cash of Rs.22 lacs in the bank account maintained by the assessee with Gramin Bank of Aryavart, Karhal, Mainpuri during the demonetization period, but the bank clarified to the Assessing Officer that Rs.20,00,000/- was an erroneous entry , which was rectified by the bank itself and no addition was made by the Assessing Officer on that account. The addition to that effect was restricted to Rs. 2,00,000/- being cash deposited by the assessee during demonetization period in the bank account maintained with Gramin Bank of Aryavat, Karhal, Mainpuri .Further, there was addition of Rs.5 lacs on account of credit on 18.04.2016 in the bank account maintained by the assessee with United Bank of India, Etawah, for which the nature and source could not be explained by the assessee. Thus, there was total addition of Rs.7 lacs made by the Assessing Officer. In the first appeal filed by the assessee, Id. CIT(Appeals) granted relief of Rs.2.50 lacs by accepting the contention of the assessee that the cash deposits were out of past savings of the assessee. CIT(Appeals) referred to Instruction No. 03/2017(SOP) and Instruction No.07/2014 issued by CBDT and order of ITAT Agra Bench in ITA No. 35/Agr/2021 dated 18.06.2021. Thus, so far as the addition of Rs.2 lacs made by the Assessing Officer towards cash deposited during the demonetization period is concerned, the Id.

CIT(Appeals) has accepted the contention of the assessee and has given part relief to the assessee. The department is not in appeal nor any cross objection has been filed by the Revenue, against the relief granted by the learned CIT(A). Hence, the matter has achieved finality. So far as addition of Rs.5 lacs is concerned, it was not on account of cash deposit during the demonetization period rather it was a credit entry on account of transfer of Rs.5 lacs by Shyam Construction on 18.04.2016 ,and a certificate is filed by Shyam Construction dated 20.12.2019 wherein they have stated that they have borrowed Rs.5 lacs from the assessee vide cheque No. 914587 on 04.02.2016 of United Bank of India on 04.02.2016, which was returned by RTGS on 18.04.2016. Certificate of Shyam Construction, PAN of proprietor of Shyam Construction and bank account statement of assessee are filed by the assessee, which are placed on record in file.The assessee has claimed the same to be filed before Id. CIT(A). The written submissions filed before Id. CIT(A) are placed on record in paper book filed by the assessee before ITAT. The same was also stated in the statement of facts/grounds of appeal filed in Form No. 35 filed before Id. CIT(A). Unfortunately, the Id. CIT(A) did not conducted any enquiry/verification with respect thereto as is contemplated u/s 250(4). No remand report was called for by Id. CIT(A) from the AO nor Ld. CIT(A) did not considered appropriate to call for assessment records. Sr. DR could

not controvert the same. I have observed that the assessee has duly demonstrated on merits the fulfilment ingredients of section 68 of the Act, and no addition is warranted on merits. Further, I have observed that the Assessing Officer has exceeded his jurisdiction as the case was selected for framing limited scrutiny on the ground of cash deposited during the demonetization period. The department has not demonstrated that the Assessing Officer has taken prior approval of the concerned learned PCIT/CIT before expanding the scope of limited scrutiny. Thus, the addition made by the AO and as upheld by Id. CIT(A) is not sustainable. Accordingly, I order deletion of addition. The assessee succeeds in this appeal.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 07.02.2025

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

Dated: 07.02.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra