

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRABENCH, AGRA**

**BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
And
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No. 218/Agr/2024
Assessment Year: 2012-13**

Smt. Saroj, Vill. & Post – Dharau, Mainpuri-205001 Uttar Pradesh	v.	Income-tax Officer, Ward 2(5), Civil Lines, Mainpuri-205001, U.P.
PAN :LNPPS2117H		
(Appellant)		(Respondent)

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

Date of hearing	21.01.2025
Date of pronouncement	14.2.2025

ORDER

PER RAMIT KOCHAR, AM:

This appeal in ITA No. 218/Agr/2024 for the assessment year 2012-13 has arisen from the appellate order dated 14.01.2024 [DIN & Order No. ITBA/APL/S/250/2023-24/1059698444(1)], passed by learned ADDL/JCIT(A)-1, Delhi, which appeal before Id. Addl/JCIT(A)-1, Delhi in turn has arisen from the assessment order dated 29.11.2019 passed by Assessing Officer u/s. 143(3) read with section 147 of the Income-tax Act, 1961.

2. Grounds of Appeal raised by the assessee in the Memo of Appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, reads as under :

1. Because on the facts of the case and being unaware of the notices of appeal hearing uploaded on income tax portal the compliances could not be made before Ld. CIT(A) although the affidavits of the seller parties and of the mediator were duly filed along with appeal filed in terms of Rule 46A of the Income Tax rules. The Ld.CIT (A) has erred in not accepting the same.

2. Because on the facts of the case the Ld.CIT(A) has erred in confirming the addition of Rs 16,00,000/- made by the Assessing Officer for the reason that the assessee failed to furnish evidences in support of cash deposit made in saving bank account.

3. Because on the facts of the case the Ld.CIT (A) has erred in not considering the affidavits filed in support of the source of cash deposited in saving bank account. These affidavits were filed along with the appeal filed.

4. Because the Ld. CIT (A) on his own presumption has framed the reason for confirming the addition of Rs 16,00,000/- which is factually wrong.

5. Because under the facts and circumstances of the case the addition of Rs 16,00,000/- deserves to be deleted.

6. Because without prejudice to the grounds, as taken above, since proper and required compliances could not be made before the authorities below, for the reason as mentioned in the facts of the case, the assessee humbly request that the appeal be restored back to the Assessing Officer for reconsideration.”

3. Brief facts of the case are that as per information gathered by the Assessing Officer that the assessee has deposited Rs.16 lakhs in cash in her Saving Bank Account No. 32252355696 with State Bank of India

during the year under consideration. Assessing Officer issued notice dated 25.03.2019 u/s. 148 of the Act to the assessee after taking approval from competent authority, for reopening of the concluded assessment. The assessee had not filed return u/s 139. .In compliance thereof to the notice u/s 148, the assessee filed return of income declaring nil income. Notice u/s. 142(1) was issued by the Assessing Officer during the course of reassessment proceedings. The assessee in response thereof submitted bank statement, but failed to furnish any evidence regarding source of cash deposits made by her in her saving bank account. The Assessing Officer issued show cause notice dated 02.09.2019 u/s. 144 to the assessee, but the assessee did not comply. Assessee thereafter submitted reply before the Assessing Officer and submitted that she is a house wife and also submitted copy of power of attorney dated 20.03.2012 and copy of sale deed of two immovable properties sold by Sh. Sugriv Singh on 07.11.2012 for Rs.10,50,000/- and Rs.4,45,000/-. It was submitted that the power of attorney was given by her husband to Shri Sugriv Singh to sell the immovable property and the amount received as advance against sale of property was deposited in her bank account. The assessee submitted that she has 1/20th share in the property. Assessing Officer observed that the assessee has submitted power of attorney dated 20.03.2012 , but the assessee has

failed to furnish any evidence regarding advance payment received during the F.Y. 2011-12 against the sale of properties. The Assessing Officer observed that the assessee submitted that two immovable properties were sold for Rs. 14,95,000/- ,and the assessee has 1/20 share in the properties , hence the assessee share comes to Rs. 74,750/- whereas the cash deposited in the bank account is Rs. 16,00,000/- . The AO rejected the explanation submitted by the assessee in support of cash deposit of Rs. 16,00,000/- . The Assessing Officer made the addition of Rs.16,00,000/- to the income of the assessee as the assessee failed to furnish any evidences regarding payment received as advance against sale of properties , and hence the cash deposits made into her saving bank remained un-explained.

4. Aggrieved, the assessee filed first appeal with Id. CIT(Appeals), which was dismissed by learned CIT(Appeals) by observing that the assessee has not submitted any written submission or documentary evidences during appellate proceedings despite as many as four notices issued by learned CIT(A). Learned CIT(Appeals) also observed that the assessee has claimed that the land belonged to her husband and her four brother, having equal share. As per the appellant, all the brothers are illiterate and hence there was no bank account in their names, and thus the advance money received on such sales was deposited in her

bank account. The assessee has stated that three sales deeds were executed for a total consideration of Rs. 19,00,000/- out of which, an amount of Rs. 16,00,000/- was received in advance through a mediator , which was deposited in the bank account. In the statement of fact , the assessee has stated that affidavits of the husband of the assessee and his four brothers and the mediator could not be produced before the AO , but the same was stated to have been enclosed with the appeal. The Id. CIT(A) observed that these affidavits were not enclosed by the assessee as is contended in SOF. The Id. CIT(A) also observed that the assessee has not submitted any written arguments and/ or documents/evidences to substantiate his contentions during appellate proceedings. The Id. CIT(A) observed that in the absence of the aforesaid documents claimed to have been submitted by the assessee, even no remand report could be called from the AO. The Id. CIT(A) also disbelieved the claim of the assessee having received advance of Rs. 16,00,000/- in cash against sale of property, which was claimed to have been deposited by the assessee in her bank account. Thus, in nutshell, learned CIT(Appeals) dismissed the appeal of the assessee in the absence of evidences/explanation submitted by the assessee to support her contentions.

5. Still aggrieved, the assessee has filed second appeal with ITAT, and the Id. Counsel for the assessee Shri Pankaj Gargh, Advocate opened arguments before the Bench and submitted that there is a delay of 82 days in filing this appeal belatedly before the Tribunal beyond the time prescribed u/s. 253(3) of the Act. Ld. Counsel submitted that the assessee has duly filed application supported with affidavit for condonation of delay in filing this appeal with ITAT belatedly by 82 days beyond the time prescribed u/s 253(3). Ld. Counsel for the assessee drew our attention to the application supported with affidavit filed by the assessee, and contended that notices u/s. 250 which were issued by the Id. CIT(Appeals) and uploaded on IT e-portal but the same could not be seen by the counsel of the assessee Shri R.P. Gupta, Advocate. It is submitted that Shri R.P. Gupta, Advocate is not fully updated digitally and hence, since notices were not checked/seen in the e-portal, there was no compliance by the counsel for the assessee with the learned CIT(Appeals) and ex-parte appellate order was passed by the Id. CIT(Appeals) on 14.01.2024. The said appellate order was also not seen by Shri R.P. Gupta, Advocate. Hence, the appeal could not be filed in time. It is only when the assessee's son received SMS from department on 15.05.2024 to pay outstanding demand, the assessee became aware of the appellate order passed by the Id. CIT(Appeals). Thereafter,

immediately assessee's son went to Shri R.P. Gupta, Advocate and informed him about the demand notice ,then Shri R.P. Gupta looked into e-portal of Income-tax Department and found uploaded appellate order dated 14.01.2024 passed by Id. CIT(Appeals). Then the assessee took effective steps to immediately file the appeal with ITAT by engaging Shri Pankaj Gargh, Advocate as her counsel for filing the appeal with ITAT. Thus, prayers were made to condone the delay of 82 days in filing this appeal belatedly with ITAT beyond the time prescribed u/s 253(3).

6. Learned Sr. DR on the other hand, submitted that learned CIT(Appeals)'s appellate order as well as notices issued during the appellate proceedings were duly posted on e-portal of Income Tax Department and the assessee failed to verify the said portal. It was submitted that it was a valid service of notices/appellate order passed by Id. CIT(Appeals). However, Id. Sr. DR fairly left the matter to the discretion of the Bench so far as prayers of the assessee for condonation of delay are concerned.

7. After hearing both the parties and perusing the material on record, we are of the considered view that the delay of 82 days in filing this appeal belatedly with ITAT beyond the time prescribed u/s 253(3) need to be condoned. It is an admitted position that the Id. CIT(Appeals) has posted the notices issued in the appeal proceedings as well as appellate

order dated 14.01.2024 passed by him on the e-portal of the IT department. Sr. Sr. DR could not controvert this position. It is also submitted by the assessee in its application/affidavit of Shri R.P. Gupta, Advocate that the Id. Counsel for the assessee Shri R P Gupta, Advocate is not well versed with the digital technology and he did not see/view notices issued by the Id. CIT(Appeals) as well as appellate order dated 14.01.2024 passed by Id. CIT(Appeals). It is only when SMS was received by the son of the assessee on 15.05.2024 to pay the outstanding demand, the assessee became aware about the appellate order passed by Id. CIT(Appeals). Thereafter, Shri R.P. Gupta, Advocate was approached by assessee's son, wherein he opened the e-portal. These are the initial phases of switching over to technology based digital working, wherein proceedings are conducted electronically/in a faceless manner and in the initial phases, there are likely to be glitches including technical glitches, inadequacy of computer literacy etc. which both the parties may face and liberal view needs to be taken while condoning the delay in filing of the appeal. Reference is also drawn to the judgment of Hon'ble Punjab and Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship, Ludhiana v. CIT(E), Chandigarh (2024) Live Law (PH)106(Case No. CWP-21028-2023(O&M)*, in which Hon'ble Punjab and Haryana High Court has held

that merely uploading of the communication (notice) in the Income Tax department e-portal is not sufficient mode of communication keeping in view principles of natural justice which are inherent in income tax proceedings as also keeping in view provisions of Section 282 of the 1961 Act and Rule 127 of the 1962 Rules. When technicalities are pitted against advancement of substantial justice, then the Court will lean towards advancement of justice unless malice or negligence is at writ large. The assessee is not likely to gain anything by filing this appeal belatedly. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of *Collector of Land Acquisition , Anantnag v. Mst. Katiji & Ors. 1987 AIR 1353*. Thus, in the interest of justice, we condone the delay of 82 days in filing of the appeal before the Tribunal belatedly beyond the time prescribed u/s 253(3), and proceed to adjudicate this appeal on merits. We order accordingly.

8. On merits of the issue, Id. Counsel for the assessee submitted that there was cash deposit of Rs.16 lakhs in the bank account of the assessee, which was added by the Assessing Officer to the income of the assessee as the source of cash deposit could not be explained. It was submitted that additional evidences were filed before the Id. CIT(Appeals), which are duly mentioned in Form No. 35, but the Id. CIT(Appeals) has stated in the order erroneously that no additional

evidences have been filed. Ld. Counsel for the assessee drew our attention to paper book carrying 109 pages filed with the Tribunal, which are in the form of additional evidences which were filed before the CIT(Appeals), and it was submitted that the CIT(A) has not called for remand report. The list of additional evidences is enclosed at page 1 of the paper book, which is reproduced hereunder :

1. Affidavit of Appellant Smt. Saroj W/o Shri Ram Bahadur R/o Vill Dharau, Distt. Mainpuri.
2. Affidavit of Shri Gajraj Singh S/o Shri Bhagwan Singh R/o Vill Dharau, Distt. Mainpuri.
3. Affidavit of Shri Raj Bahadur S/o Shri Bhagwan Singh R/o Vill Dharau, Distt. Mainpuri.
4. Affidavit of Shri Ram Bahadur S/o Shri Bhagwan Singh R/o Vill Dharau, Distt. Mainpuri
5. Affidavit of Smt. Meena Devi W/o Late Shri Subedaar Singh R/o Vill Dharau, Distt. Mainpuri
6. Affidavit of Smt. Munni Devi W/o Late Shri Sugareev Singh R/o Vill Dharau, Distt. Mainpuri
7. Affidavit of Shri Shiv Ram Singh S/o Shri Nawab Singh R/o Vill Dharau, Distt. Mainpuri.
8. Photo State Copies of 3 Sale deeds of whom land were sold and from whom Advance money were received which were deposited into SB A/c of Appellant.”

It was prayed that the matter can be restored back to the file of the Assessing Officer, as these additional evidences requires verification/enquiry. Our attention was drawn to ground No. 6 wherein

specific prayer has been made by the assessee that for the reasons mentioned in the facts of the case and since proper compliance could not be made before the authorities below, the matter can be restored to the Assessing Officer for reconsideration.

9. Learned Sr. DR relied upon the order of the Id. CIT(Appeals).

10. We have considered the rival submissions and perused material on record. We have observed that the assessee did not file return of income originally with the department u/s 139. The assessee has deposited Rs.16 lakhs in cash in her bank account on 23.03.2012 in Saving Bank Account No. 32252355696 with State Bank of India during the year under consideration. Based on the information gathered by the Assessing Officer, proceedings u/s. 147 were initiated by the AO for reopening of the concluded assessment, and notice dated 25.03.2019 u/s. 148 of the Act was issued to the assessee. The assessee filed return of income declaring nil income, in response to notice issued by the AO u/s 148. The assessee has claimed that income chargeable to tax as per provisions of the Act was Nil and the assessee was not liable to file return of income u/s. 139(1) of the Act. The assessee has claimed to be agriculturist. During the course of reassessment proceedings, the assessee submitted bank statement before the Assessing Officer as well as copy of power of attorney dated 20.03.2012 and copy of sale deed of two immovable

properties sold by Sh. Sugriv Singh on 07.11.2012 for Rs.10,50,000/- and Rs.4,45,000/- and claim was made that the assessee received advance, which was deposited in her bank account. The Assessing Officer rejected the contention of the assessee because as per Assessing Officer share of the assessee in the property was only 1/20th, which comes to Rs.74,750/- while the deposits were made of Rs.16 lakhs in the bank account of the assessee.. Before the Id. CIT(Appeals), the assessee claimed to have filed additional evidences, which are stated in Form No. 35, but the CIT(Appeals) was of the view that no additional evidences were enclosed with the CIT(Appeals) and in the absence of any evidence/explanation to substantiate the contentions raised by the assessee to substantiate the case deposits in the bank account of the assessee to the tune of Rs. 16 lacs, the appeal was dismissed by the Id. CIT(Appeals). Before us, the assessee has filed paper book carrying 109 pages, which carries gist of documents as under :

1. Affidavit of Appellant Smt. Saroj W/o Shri Ram Bahadur R/o Vill Dharau, Distt. Mainpuri.
2. Affidavit of Shri Gajraj Singh S/o Shri Bhagwan Singh R/o Vill Dharau, Distt.Mainpuri.
3. Affidavit of Shri Raj Bahadur S/o Shri Bhagwan Singh R/o VillDharau, Distt. Mainouri.
4. Affidavit of Shri Ram Bahadur S/o Shri Bhagwan Singh R/o Vill Dharau, Distt. Mainpuri

5. Affidavit of Smt. Meena Devi W/o Late Shri Subedaar Singh R/o Vill Dharau, Distt. Mainpuri
6. Affidavit of Smt. Munni Devi W/o Late Shri Sugareev Singh R/o Vill Dharau, Distt. Mainpuri
7. Affidavit of Shri Shiv Ram Singh S/o Shri Nawab Singh R/o Vill Dharau, Distt. Mainpuri.
8. Photo State Copies of 3 Sale deeds of whora land were sold and from whom Advance money were received which were deposited into SB A/c of Appellant.”

The assessee has claimed that these documents were filed before Id. CIT(A), but Id. CIT(A) did not took cognizance of these documents and no remand report was called for by Id. CIT(A) from the AO, on the ground that these documents were never filed by the assessee. Now, that these documents are filed by the assessee before the ITAT. It is averred by the assessee that she was jointly owning the land with her husband and his 4 brothers. It is claimed that all the brother are illiterate and were not having bank account. It is claimed that they are all engaged in agricultural activities. It is also claimed that advance was received from middleman for sale of land in cash as share of sale proceed of property, which was deposited in assessee's bank account. As can be seen, the assessee has filed affidavits of various persons who were claimed to be family members and the co-owners of the land sold by the assessee, as well as copy of sale deeds dated 22.08.2012, 03.08.2012 and

26.11.2012. Copy of bank statement is also enclosed. It is stated that these documents were filed before the Id. CIT(Appeals), but the CIT(Appeals) did not take into cognizance and did not call for any remand report under Rule 46A of the Act from the AO. Since these documents were filed before the Id. CIT(A) for the first time, the same requires verification by the authorities. The assessee has claimed to have received advance with respect to sale of above properties and the relatives of the assessee have also given their share of sale proceeds received in cash to the assessee, which stood deposited in the bank account of the assessee. These documents go to the root of the matter and require verification and investigation of fact to unravel the truth. Thus, both the authorities below did not have the advantage of these documents/evidences, and the orders were passed against the assessee without consideration of these evidences. In the interest of justice, the orders of the authorities below are required to be set aside and the matter is remanded back to the file of the Assessing Officer for de novo assessment. Assessing Officer shall admit these additional evidences filed by the assessee and thereafter frame de novo reassessment after making such verification/enquiries as deemed fit by the Assessing Officer. The assessee shall cooperate in the de novo reassessment

proceedings. We clarify that we have not commented on the merits of the issue arising in this appeal. We order accordingly.

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

Order pronounced in the open court on 14.2.2025.

**Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER**

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

Dated: 14.2.2025.

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra