



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

**BEFORE SHRI SUBHASH MALGURIA, JUDICIAL MEMBER
AND SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.133/ALLD/2024
Assessment Year: 2015-16

Dhirendra Singh Mangraha, Chunar Mirzapur	v.	Income Tax Officer Ward 3(1) Mirzapur
PAN:BIPPS5569C		
(Appellant)		(Respondent)

Appellant by:	Shri Brij Bhushan Goenka, C.A.		
Respondent by:	Shri A. K. Singh, Sr. D.R.		
Date of hearing:	02	01	2025
Date of pronouncement:	20	03	2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi under section 250 of the Income Tax Act, 1961 on 03.07.2024. The grounds of appeal are as under:

- 1. Because the order of learned AO as confirmed by the Appellate Authority is bad in law as well as on facts of the case.*
- 2. Because the order is based on improper notice u/s 143 (2) and thus deserves to be annulled*
- 3. Because the learned AO as well as appellate authority has not taken proper cognizance of the fact that*

Rs.5551043.83 was opening capital and hence cannot be considered as income of current year from undisclosed source.

4. Because there was proper evidence of old capital balance and was appreciated by the AO in his remand report but learned CIT (A) failed to accept the same based on conjecture and surmises.

5. Because the learned CIT (A) failed to appreciate the proof of credit worthiness of the relatives gifting the amount to the appellant and his observation deserves to be rejected.

6. Because your appellant requests your permission to add, modify or rectify any grounds of appeal late or before hearing of the case.

2. The facts of the case are that the assessee e-filed the return on 09.01.2016, showing total income of Rs.2,03,640/-. Thereafter, on 10.01.2016, he revised his return and declared a total income of Rs.3,88,530/-. Notice under section 143(2) of the Act was issued by ITO-3(1), Varanasi on 21.09.2016 since the case was selected for limited scrutiny under CASS. Subsequently, this case was transferred to the ITO-3(1), Mirzapur, who completed the assessment on 28.12.2017. Several notices were issued to the assessee under section 142(1) of the Act by the said ITO, but the assessee only replied to the last notice, i.e., notice under section 142(1) of the Act dated 30.08.2017. In response to the notice, the assessee filed a copy of Audit Report, Balance Sheet, profit and loss account and copy of ITR. The Assessing Officer records that when asked to substantiate the issue involved, i.e., "increase in capital", the

A.R. of the assessee could offer no explanation in this regard. The Assessing Officer observed that the assessee had shown increase in capital account of Rs.1,15,69,573/- as compared to assessment year 2014-15 (where no capital amount was shown) and since explanation was not offered, the Assessing Officer concluded that the increase in capital was from undisclosed sources. He, therefore, added the same to the total income of the assessee as unexplained money under section 69A of the Act. Aggrieved with this order, the assessee went in appeal to the Id. CIT(A), Allahabad. Subsequently, the appeal was migrated to the NFAC. Before the Id. CIT(A), it was submitted that the assessee was engaged in the business of Poultry Farming and maintained regular books of account which were audited. It was submitted that during the course of assessment proceedings, the audit report and other details were filed, but without verifying the same, the entire capital, as on 31.03.2015, was added back, without considering the fact that that capital included opening balance, net profit of the year and capital from definite sources. It was submitted that the AO had not considered the balance sheet as a whole and made assessment ex-parte without giving proper opportunity to the assessee. It was submitted that against the opening capital, there was investment in Poultry Farm and stock-in-hand. The assessee filed valuation certificate issued by Surya Associates, Kanpur where they had certified to the bank that distress value of the property as on 16.01.2014 was to the tune of Rs.75.24 lakhs. It was submitted that this, along with opening trial balance as on 01.04.2014, proved that there was opening capital of Rs.55.51 lakhs. It was further submitted that uploaded 3CD Report gave details of existing assets and the additions during the year, at point No.18. With

regard to fresh addition to capital, it was submitted that the assessee had purchased land from his wife and sister-in-law for expansion of his Poultry Farm. A copy of the sale deed was submitted, showing the cost of this to be Rs.15 lakhs. It was pointed out that about 30% of the land, at an estimated cost of Rs.4.55 lakhs, was introduced as capital in assessment year 2013-14 itself, on which first phase of Poultry Farm was established. Another 30% of the land at an estimated cost of Rs.4.55 lakhs was introduced as capital in this year for establishing second phase of Poultry Farm. These additions were apparent from Schedule of the Fixed Assets. Regarding the addition of Rs.48.75 lakhs added to the capital, it was submitted that the same was the estimated market value of Brooding and Growing House (9000 sq. ft.). It was being run by the assessee in rented premises of his mother, Smt. Sita Devi since 01.10.2013. This year, the same was taken as a gift from mother and introduced in the capital. Papers in this regard were attached. Finally, it was submitted that Rs.5.25 lakhs had been received as gifts in cash from four family members, i.e., Rs.1.75 lakhs from his father, Shri Lallan Singh, Rs.1.50 lakhs from his brother, Shri Sunil Kumar Singh, Rs.1.00 lakh from his wife, Smt. Sarita Devi and Rs.1.00 lakh from his sister-in-law, Smt. Poonam Singh. Copies of gift confirmation letters were filed. It was submitted that due to certain family problems, these documents, explaining addition of capital, could not be submitted before the Assessing Officer and it was prayed that the same may be admitted as additional evidence under Rule 46A of the Income Tax Rules, 1962.

3. The ld. CIT(A) remanded the matter back to the Assessing Officer. The Assessing Officer submitted a Remand

Report in which he essentially accepted the explanations offered by the assessee and informed the Id. CIT(A) that the additional evidences may be accepted and disposed of on merit. However, the Id. CIT(A) held that the creditworthiness of Shri Lallan Singh, Shri Sunil Kumar Singh, Smt. Sarita Singh and Smt. Poonam Singh was not proved, because the relatives had not filed any Income Tax Returns. In these circumstances, he held the same to be unexplained credits under section 68 of the Act and upheld the addition to the extent of Rs.5.25 lakhs on this account. With regard to the opening balance of Rs.55,51,043/-, the Id. CIT(A) held that the assessee had not given any clear explanation for the opening balance in the capital account. This was a credit entry made in the previous year, as the same was there as credit balance in the preceding year. The Id. CIT(A) held that this entry was only made to account for the assets of the business once the assessee decided to formalize the business. That the source of this capital was not explained and the assessee had tried to explain the assets using a book entry. The Id. CIT(A) pointed out that since the amount had been credited in the books of account in the relevant previous year and the explanation thereafter was not satisfactory, the addition made by the Assessing Officer with regard to the claim of opening balance under section 68 of the Act, was deserved to be upheld. He, therefore, confirmed the addition. The Id. CIT(A), however, accepted the explanation of the assessee for the fresh addition to capital account and did not confirm the addition in this regard. On the issue of service of notice under section 143(2) of the Act, the Id. CIT(A) dismissed the arguments of the assessee pointing out that the assessment order itself contained the details of service of notice under section 143(2) of the Act and on the issue of ex-parte assessment, he

held that since the additional evidence had been admitted under Rule 46A of the Rules, the ground was now infructuous. Accordingly, the appeal of the assessee was partly allowed.

4. The assessee is aggrieved at this partial confirmation of the assessment order and has accordingly come before us in appeal. Shri Brij Bhushan Goenka, C.A. (hereinafter known as the Ld. A.R.) submitted that the assessment was bad in law because the ITO, having jurisdiction, had not issued any notice under section 143(2) of the Act, before finalizing the assessment order under section 143(3) of the Act. He drew reference to the fact that various Courts, including the Hon'ble Supreme Court in the case of CIT vs. Hotel Blue Moon [2010] 321 ITR 362 (SC) had held that issuance of notice under section 143(2) of the Act was mandatory for assuming jurisdiction to frame scrutiny assessment under section 143(3) of the Act, and in the absence of valid notice under section 143(2) of the Act, scrutiny assessment under section 143(3) of the Act could not be framed, as the omission to issue notice under section 143(2) of the Act was not a curable defect. Without prejudice to this legal ground, the Ld. A.R. argued that the ld. CIT(A) had erred in adding back the opening capital, without noticing that there was no scope for the assessee to show the opening capital in any previous return, as the annual income previous to this year was about Rs.1.75 lakhs. It was submitted that the Poultry Farm was opened in financial year 2010-11 and in proof of this; he submitted copies of Trade Tax Registration of the same Poultry Farm valid upto 22.08.2012. He also drew our attention to the sanction letter issued by the Department of Animal Husbandry, U.P. dated 06.08.2014 for establishing two units of 30,000 birds. The Ld. A.R. also invited our attention to the valuation report prepared by

Surya Associates for the Branch Manager, Allahabad UP Gramin Bank, Mirzapur Branch, District Mirzapur dated 16.01.2014, which showed that the value of the building and structure at Arazi No.320(M) situated at Mauza-Parsiya Tappa Upraudh, Pargana-Kantit, Tehsil-Manihan, Distt. Mirzapur, U.P. was valued at Rs.64,92,000/- on 14.01.2014. He submitted that a perusal of the valuation report shows that the Poultry Farm was functional on the premises on the date of valuation. Further examination would show that the estimated value of the existing Poultry Shed was determined at Rs.46,35,223/-, while the value of the existing Egg Store Room was at Rs.6,64,454/-, while new Poultry Shed under construction was at an estimated cost of Rs.64,92,407/-. He further pointed out that prior to this, Allahabad UP Gramin Bank had sanctioned a cash credit limit of Rs.58 lakhs for the Poultry Farm and also term loan for Rs.194 lakhs against collateral security being equitable mortgage of land and building of Smt. Sarita Singh, w/o Shri Dharendra Singh. The Ld. A.R. invited our attention to pages 75 & 76 of the paper book, which was the order of the Dy. Collector, Madihan, Mirzapur, wherein the Ld. Dy. Collector had pointed out that a Poultry Shed of 31280 sq. ft. existed on the said premises. The Ld. A.R. pointed that the balance sheet of the assessee had been prepared for the first time in this year, but all these evidences showed that there was no doubt as to the fact that the Poultry Sheds were existing from before and, therefore, they represented opening balance of capital. With regard to the gifts made by the assessee's relatives, the Ld. A.R. pointed out that the mere fact that they did not file Income Tax Returns, did not rule out their creditworthiness. He pointed out that the assessee's family was an agricultural family having 5 Bighas of rural agricultural land.

Inviting our attention to page 109 of the paper book, he stated that they were in the business of cultivating green chilies which were fetching Rs.30,000/- per Bigha and accordingly their income was not less than Rs.10 lakhs per year. It was submitted that the creditors had sufficient fund and the bank had given loan to the assessee after taking of margin money. He drew our attention to the remand report that was submitted before the Id. CIT(A) where the AO had accepted the documents produced before him. He further pointed out that gift confirmations and affidavits had been filed by all the donors. He further pointed out that on 16.08.2013, assessee's wife and his sister-in-law had sold a property worth Rs.15 lakhs and therefore, the creditworthiness stood proved. Accordingly, the Ld. A.R. prayed that there was no justification for disallowance and the same should accordingly be deleted.

5. In response, Shri A. K. Singh, Ld. Sr. D.R. pointed out that the assessee had not made any compliance before the AO. He agreed that under section 44AD of the Act, the assessee was not supposed to maintain regular books of account, but was supposed to file statement of affairs or audited balance sheet to show how the assets of the previous year were being carried forward to the subsequent year. The Ld. Sr. D.R. pointed that the Id. CIT(A) had dealt with all the issues and granted relief where it was due. There was no further scope of granting any relief in the matter.

6. We have duly considered the facts and circumstances of the case. We note that the assessee was non-compliant before the AO, but subsequently furnished the necessary documentation before the Id. CIT(A) with a prayer to admit them under Rule 46A of the Rules. We further note that the Id. CIT(A)

remanded the matter back to the AO for examination of these documents, and the AO, after examination of these documents, did not record any adverse findings. We believe that there is sufficient third party evidence that has been adduced by the assessee to show that the Poultry Farm was already in existence or atleast infrastructure for the Poultry Farm had already come into existence prior to 01.04.2014. Therefore, there is no basis to hold that the infrastructure of the Poultry Farm, which constitutes opening balance of capital of the assessee as on 01.04.2014, was not in existence. We observe that merely because a sum was not reflected in an earlier return, which was filed as a no account case, cannot be a ground to dispute the existence of the fixed assets that clearly existed. Therefore, the additions sustained by the Id. CIT(A) of Rs.55,51,043/- is deleted. Accordingly, grounds No.3 & 4 of the assessee's appeal is allowed.

7. With regard to the additions made on account of gifts received from relatives, we observe that the assessee has already filed copies of the sale deed whereby his wife and sister-in-law have together sold a property valued at Rs.15 lakhs in the recent past. Thus, the creditworthiness of these two donors stand established. It is also observed that the assessee has filed details of landholding held by his brother and his father in the form of downloaded statements from Bhulekh Website of Uttar Pradesh which showed that they had sufficient landholding to earn agricultural income and make advances of the amount claimed by the assessee as gift. In the circumstances, there being sufficient reason to consider all the donors as creditworthy, the addition of Rs.5.25 lakhs sustained by the Id. CIT(A) is also

deleted. Ground No.5 of the assessee's appeal is accordingly allowed.

8. Finally, it is observed that the assessee has also challenged the validity of the assessment on account of non-service of notice under section 143(2) of the Act, by the AO who subsequently completed the assessment. We observe that the Ld. A.R. has not brought any evidence on record to demonstrate that the Officer, who issued notice under section 143(2) of the Act, did not enjoy jurisdiction over the assessee at that point of time. In the absence of such evidence, it is not possible to hold that the assessment was void on this account and the judgments cited by the assessee will have no application to the facts of the present case. Accordingly, grounds No.1 & 2 of the appeal are rejected.

9. Ground No.6 is general in nature which does not require any specific adjudication.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 20/03/2025.

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

DATED:20/03/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By Order
Assistant Registrar

