IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD 'DB' BENCH, ALLAHABAD

BEFORE SH. SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA No.124/ALLD/2024
A.Y. 2012-13

Jai Maa Durga Traders, Ballia	vs.	Commissioner of Income-tax (Appeals), Income Tax Department
PAN:AAGFJ8468H		
(Appellant)		(Respondent)

Assessee by:	Sh. Kumar Ankit Srivastava, Adv
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	10.02.2025
Date of pronouncement:	01.05.2025

O R D E R

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the order of the ld. CIT(A), NFAC dated 20.05.2024 under section 250 of the Income Tax Act, 1961 dismissing the appeal of the assessee. The grounds of appeal filed by the assessee are detailed and run into 16 pages. Accordingly, for reasons of brevity, the grounds of appeal are not being reproduced in the order but the essence of the grounds are that the unilateral order in question was excessive, illegal and without justice and that the complete details of inward supplies and outward supplies received by the assessee in the relevant year had been submitted, the accounts had been audited and audit report uploaded on the portal. The firm had erroneously been allotted a second PAN in the F.Y. 2011-12 on application for duplicate PAN and this second PAN had been furnished to the bank while the ITR and Tax Audit Report had been submitted on the existing PAN. As a result of this, an impression had been created that there were unexplained deposits in the bank account but the fact is that all the deposits were

explained by the return and the tax audit report which was submitted alongwith the first PAN. It has further been argued that the partner looking after the activities of the firm was not well since he had been detected with COVID in the second wave and therefore, he could not get the notices checked online. Therefore, there was non-compliance. However, the ld. AO had not applied his mind to the facts of the case and just made whole scale additions without referring to the material available on record. Finally, the assessment was itself barred by limitation, because in general cases, a notice under section 148 had to be issued within three years from the end of the relevant assessment year, but in this case the notice had been issued within ten years, which could only happen if the tax evasion in question was in excess of Rs.50 Lacs and in this case there was no tax evasion because everything had been disclosed albeit under a different PAN and therefore, while filing wrong details of PAN is punishable with penalty it did not justify assessment of the amount in the assessee's hands. Various case laws have also been included in the grounds of appeal and we have also been given in an overview into the history of taxation in India stretching back from the *Arthshastra to the Manusmriti.* As such the grounds preferred by the assessee do not appear to be maintainable on account of their verbosity and irrelevance on many counts. However in the interest of justice, we deem it fit to decide the salient points in the case so that justice may be done to both parties.

2. At the very outset, it is noticed that the appeal is late. It was submitted that while the appeal is late, it is within time from the time when the assessee came to notice it. The assessee has submitted that since he is not familiar with the Portal or computer (not being literate), he could not access the order previously but the moment he received the same by registered post, he handed the same over to his tax advisor by which time, the appeal was already delayed. Accordingly, it is prayed that the delay may kindly be condoned and reference has also been invited to certain decisions of the ITAT where the ITAT has condoned the delay. On considering the

facts of the matter and especially the fact that the assessee is not literate, let alone computer literate, we condone the delay and admit the appeal for hearing in the interest of justice.

3. The facts of the case are that the assessee is a partnership firm engaged in wholesale trading of sugar, it purchases sugar bags in the bulk quantity from sugar mills and sells to it to retailers in the city of Ballia. It filed its ITR after getting the books of accounts audited under section 44AB. However, the ld. AO noted that a sum of Rs. 13,92,18,000/- was deposited in HDFC Bank account held by the assessee firm i.e. Account No.18858620000017 at HDFC Bank, Town Hall, Ballia. As the ld. AO found that the assessee had not filed a return of income, he issued a notice under section 148 followed by notices under section 142(1). However, the assessee did not respond to those notices and therefore, the ld. AO completed the assessment as a best judgment assessment.

4. Aggrieved with this order, the assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it was argued that the firm, which was assessed under the PAN No.AAEFJ6725H had requested for the issue of duplicate PAN. However, an additional PAN was issued to the assessee company which bore no. AAGFJ8468H in the F.Y. 2011-12. The assessee opened the bank account against the said PAN and all banking transactions were recorded against the said PAN. But the assessee continued to file its returns and audit reports to the department with its original PAN i.e. AAEFJ6725H. The assessee's partners are not literate or computer literate and the partner of the assessee firm was unwell during Covid and therefore, he was unable to get online notices checked. Therefore, there could not be any compliance before the ld. AO but at the same time the ld. AO was unjustified in making assessment without regard to the history of the assessee's case. The assessee did not agree that the deposits in the account were Rs.13,92,18,000/-. According to him, the amount of cash

deposit in the said bank account was only Rs.7,22,69,000/- and which was evident from the bank statement. Because the ld. AO had not considered the bank statement properly therefore, the assessment made by the ld. AO was illegal. In his opinion, the ld. AO was duty bound to give the assessee due opportunity to explain the nature and source of deposits which the ld. AO had not done and since the entire addition was made behind the back of the assessee and without any reference to the figures, the assessment was bad in law. It was submitted that the assessee was running a regular business and could not be taxed on the entire amount deposited in the said bank account but only on the profit element thereof. He further submitted that that he has not received any physical notice and therefore, could not make a submission. The matter was remanded to the AO by the ld. CIT(A) who reiterated his findings of the assessment order and the factum non-compliance by the assessee. The ld. CIT(A) pointed out that the fact of the case was that there was cash deposit of Rs. 13,92,18000/- in the bank account and the information regarding this was received from the NMS system. The notice was issued but no return was filed and no compliance was made by the assessee. Therefore, since there was credible information with the ld. AO and he had followed the due procedure to issue notice and frame an assessment under section 144 r.w.s. 147 of the Act, the appellant's contention in challenging the assessment under section 144 r.w.s 147 was lacking in merit and hence was rejected.

5. With regard to the addition of cash deposit amounting to Rs.13,92,18,000/-, the ld. CIT(A) observed that the assessee had agreed to cash deposits of Rs. 7,22,69,000/- and shown very limited profit i.e. only Rs. 27,910/- on them. But he had not offered any explanation as to how the amount of Rs.13,92,18,000/- had been deposited in the bank account and even the profit disclosed by him on his admitted deposit was much below the accepted rate of taxation. Therefore, he dismissed the appeal of the assessee and confirmed the addition made by the assessee.

6. We have duly considered the facts and circumstances of the case. We are in agreement with the ld. CIT(A) that there is no infirmity in the action of the ld. AO in reopening the case or in finalizing assessment under section 144. An AO has to act on the basis of the materials before him. The materials that were before him indicated that there was cash deposit of Rs. 13,92,18,000/- in a bank account by an assessee which had not filed an income tax return. That gave the ld. AO a prima facie reason to belief that income had escaped assessment. Therefore, he was justified in issuing notice under section 148. Since, the assessee did not make any compliance to the notices, the ld. AO who was bound to complete the assessment in a best judgment manner and in the absence of any proof submitted by the assessee regarding expenses etc., was also bound to treat entire amount as the income of the assesse. Hence, the challenge to the orders on technical grounds i.e. for issuance of notice under section 148 and for completion of best judgment assessment under section 144 are dismissed. However, when we come to the facts of the case, we find that the assessee by his own admission has been maintaining two PAN numbers. One PAN number has been used for opening the bank account and the second PAN number has been used for filing the income tax return. The assessee submits that the deposits in the bank account made under PAN No. AAGFI8468H have been duly explained in the audit report and return filed under PAN No. AAEFJ6725H. Therefore, there is no basis for making the kind of addition that the ld. AO have. Considering that the fault is clearly that of the assessee, for doing an act impermissible in law, the onus is entirely upon the assessee to show before the ld. AO that the deposits made in the HDFC Bank account opened under PAN No. AAGFI8468H are duly explained by the returns and audit report filed under PAN No. AAEFJ6725H. Since this has not happened in the first round of assessment, therefore, we deem it appropriate to restore the matter back to the file of the ld. AO to give the assessee an opportunity to file the necessary

evidences before the ld. AO to support his case. The ld. AO may thereafter take a decision in accordance with the evidences present before him.

7. Accordingly, the matter is restored to the file of the ld. AO for *de novo* assessment.

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

Order pronounced on 01.05.2025 under Rule 34(4) of the ITAT Rules.

Sd/-	Sd/-
[SUBHASH MALGURIA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 01/05/2025
Sh

Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.