

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW 'B' BENCH, LUCKNOW  
BEFORE SH. KUL BHARAT, VICE PRESIDENT  
AND  
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.103/LKW/2024  
A.Y. 2017-18

Devi Dutt Agarwal, S/o Atma Ram, Near Police Chowki, Thomson Ganj, U.P.	vs.	Income Tax Officer, Sitapur New, Sitapur
<b>PAN:ADEPD6574F</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Govind Krishna, C.A.
Revenue by:	Sh. Prajesh Srivastava, Sr. DR
Date of hearing:	12.08.2025
Date of pronouncement:	06.10.2025

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed by the assessee against the orders of the Id. CIT(A) dated 15.09.2023 dismissing the appeals of the assessee against the orders of the Id. Assessing Officer under section 144 of the Income Tax Act, 1961 on 29.09.2019. The grounds of appeal are as under: -

*"1- The Learned Assessing Officer had erred in making addition of Rs. 36,20,000/- as per Para no. 15 of the assessment order by treating entire cash credit in bank account as undisclosed money u/s 69A of the Income Tax Act, 1961. Provisions of section 69 are not applicable. This is unjustified and against the law. The additions made u/s 69A deserves to be deleted.*

*2- The Learned Assessing Officer had erred in making addition of Rs. 18,06,250/- as per Para no. 16 of the assessment order by treating entire credit (non-cash) in bank account as undisclosed money u/s 69A of the Income Tax Act, 1961. Provisions of section 69A are not applicable. This is unjustified and against the law. The additions made u/s 69A deserves to be deleted.*

*3- The addition has been made arbitrarily by the Learned Assessing Officer. The addition made under this head is against the law.*

*4- That the Learned Assessing Officer had erred in ignoring the reply submitted and thus had erred by invoking the provisions of section 144 of the Income Tax Act, 1961.*

5- *The Learned Assessing Officer has never provided any material, documents information used against me. The assessment has been completed on 29.09.2019 (SUNDAY AT LUCKNOW) without providing sufficient opportunity to me. The limitation of assessment ends on 31.12.2019. Thus the action of Learned Assessing Officer is against the principal of natural justice.*

6- *The Learned Assessing Officer had erred in charging interest u/s 234A, 234B and u/s 234C of the Income Tax Act, 1961.*

7- *The Learned Assessing Officer had erred in not taking the cognizance of the facts available before him and appreciating them properly.*

8- *The Order of Learned Assessing Officer is erroneous and bad in law as far as the facts of the case are concerned.*

9- *The Learned Assessing Officer has not made any enquiry before passing the assessment order u/s 144 of the Income Tax act, 1961. The material, documents etc gathered by the assessing officer, have not been analyzed properly by the Learned Assessing Officer.”*

2. At the very outset, it is observed that the appeal in the instant case is delayed by 100 days. The assessee has filed a condonation petition in which it has been submitted that as the assessee was not conversant with the faceless appeal proceedings where all notices are sent on the email and the Portal of the Department and as his counsel, who resides in the Mufassil area of Sitapur (U.P.), was also not conversant with the faceless manner of proceedings, he could not respond to the notices to the notices issued by the ld. CIT(A) electronically and consequently, the ld. CIT(A) passed the order under section 250 in an *ex parte* manner. It was submitted that neither he nor his counsel was familiar with the faceless appeal proceedings therefore, they did not log in to the portal to download the order. It was only in the month of January, 2024, that the assessee contacted a counsel at Kanpur, Sh. Govind Krishna, C.A., who looked into the case and thereafter decided to file a second appeal. It was further submitted that the assessee had been unwell during the period October, 2023 to January, 2024 and in support of the same, a medical certificate was filed stating that he was suffering from acute amoebic hepatitis accompanied with hypertension, giddyness and weakness during the period 10.10.2023 to 25.01.2024. Accordingly, after considering the aforesaid facts, the delay in filing the appeal is condoned and the appeal is admitted for adjudication.

3. The facts of the case are that the Department received information that the assessee had deposited a sum of Rs. 16,30,000/- in cash during the period of demonetization in his bank A/c No. 188011100000405 in the name of Atma Ram Devi Dutt maintained with Andhra Bank Sitapur Branch. However, the assessee did not file a return of income. Accordingly, a notice under section 142(1) of the Income Tax Act was issued electronically, but the assessee did not file a return of income. Subsequently, the ld. AO obtained the relevant documents from the bank and ascertained the details of the cash deposit made with the bank. Since, the assessee had failed to respond to the notice under section 142(1), he issued the assessee a show cause notice under section 144 and upon failure to receive compliance with regard to the same, he, after comparing the cash deposits made by the assessee in F.Y. 2016-17 with the cash deposits made in the F.Y. 2015-16, assessed these deposits as unexplained money under section 69A of the Income Tax Act. In the absence of any response by the assessee, the ld. AO did not restrict the additions to the period of demonetization but, in fact, added back the entire amount that was deposited in cash throughout the F.Y. 2016-17, amounting to Rs. 36,20,000/-, and brought the same to tax under section 115BBE. He also observed that credits of Rs. 18,06,250/- have been made in the said bank account other than cash deposits and he also brought this amount to tax by applying the provisions of section 69A and 115BBE.

4. Aggrieved by this addition, the assessee carried the matter to the ld. CIT(A)-Bareilly. Subsequently, the appeal was transferred to the NFAC. In his statement of facts, the assessee submitted that he was a small trader dealing in the business of Cotton, Cotton Waste, Chunni Choker and Edible Oil in the name and style of Atma Ram Devi Dutt at Thomson Ganj, Sitapur. During the relevant assessment year, he did not have income exceeding the maximum exemption limit therefore, the ITR for the relevant assessment year had not been filed. It was submitted that the ld. AO had made additions in his name, without considering the debit entries of the said account. The nature of the account and business had not been considered. The ld.

AO had failed to observe that it was a current account in which business transactions had taken place. The assessee had not been provided with the materials on the basis of which the additions had been made. Accordingly, it was prayed that the assessment was bad in law. The Id. CIT(A) records that he issued notices for hearing on 25.02.2021, 5.07.2023, 9.08.2023 and 1.09.2023. He also enabled a communications window on 4.11.2022 in which he pointed out that in case no submissions were made, the appeal would be decided on the basis of materials on record. However, the assessee did not respond to any of these notices and therefore, the Id. CIT(A) decided to proceed on the basis of the materials on record. He first recorded the fact that various court judgments had laid down the principle that in the absence of proper pursuit of the appeal, the appeal was liable to be dismissed. He also held that even on merits, as no compliance had been made, there was nothing on record to disagree with the view of the Id. AO and therefore, again after quoting various judgments, he upheld the additions made by the Id. AO under section 69A and came to dismiss the appeal of the assessee.

5. The assessee is aggrieved at this dismissal of his appeal. Sh. Govind Krishna, C.A. (hereinafter referred to as the Id. AR) representing the matter before us submitted that the assessee was entirely dependent on his lawyer for compliance before the Id. AO and since neither the assessee nor the lawyer were well-versed with the functioning of the Income tax portal, they could not make proper compliance either at the stage of assessment or at the stage of first appeal. However, the assessee had all the evidences in his possession to demonstrate that the deposits in the stated bank account were in fact the turnover of the assessee's business and were not unexplained money under section 69A. It was, therefore, prayed that considering the circumstances of the assessee, the assessee may kindly be given an opportunity to submit these evidences before the lower authorities which would demonstrate the existence of the business and the fact that the deposits in the said bank account were not unexplained. Sh. Prajesh Srivastava, Id. DR responding to the above, submitted that the reason for the additions being made

was the non-compliant attitude of the assessee during assessment and appeal proceedings. He submitted that the failure to give an explanation was justified grounds for making the addition. However, if the Tribunal, in its wisdom decided to send the matter back for examination of the evidences, the Tribunal should accordingly, give directions to the assessee to be compliant in the proceedings.

6. We have duly considered the facts and circumstances of the case. It is seen that the assessee has filed an application for admission of additional evidence on the grounds that he was unable to attend to the proceedings before lower authorities due to the fact that he was totally dependent on his counsel and the order had been passed without appreciation of true and correct facts. It has been submitted that the assessee is a very small businessman earning income from business of Cotton, Choker and Edible Oils and the income from business is below taxable limits being only Rs.2,47,375/- at a turnover of Rs. 48,01,551/- which was verifiable from the financial statements of the assessee. In order to prove that the deposits in the bank accounts were out of the turnover of business, the assessee sought to file registration certificate under U.P. VAT Act, copy of VAT returns filed for the relevant assessment year, copy of the assessment order under the U.P. VAT Act, sample copies of sale / tax invoices issued by the assessee, sample copy of purchase bills/invoices in respect of purchases made by the assessee, self-certified copy of audited balance-sheet and profit and loss account for the relevant financial year, copies of the bank statements of the accounts at Andhra Bank and Punjab National Bank and copies of the ledger accounts of Andhra Bank account and Punjab National Bank account in the books maintained by the assessee alongwith a summary of cash deposits in the bank as extracted from ledger accounts of respective banks maintained in the books of the assessee. It was submitted that the same was necessary to establish the facts of the assessee's case.

7. We have duly considered the matter. Given circumstances outlined by the assessee and the nature of the evidences, since they are essential for determining whether any tax liability of the nature levied by the ld. AO, are maintainable, we

admit the additional evidences and we restore the matter back to the file of the Assessing Officer for consideration of the same. The assessee shall produce them before the ld. AO and the ld. AO may, thereafter pass a fresh order, in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.  
Order pronounced on 06.10.2025 in the Open Court.

**Sd/-**

**[KUL BHARAT]  
VICE PRESIDENT**

DATED: 06/10/2025

Sh..

Copy forwarded to:

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

**Sd/-**

**[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER**

By order  
Sr. P.S.