



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI, NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No. 515/LKW/2024
Assessment Year: 2017-18

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| Mahtab Chand Agarwal, 15, Ajanta Market, Near Gurdwara, Nishatganj, Lucknow-226010. | v. | The DCIT-6 P.K. Complex, Ram Mohan Rai Marg, Lucknow-208001. |
| PAN:AEIPA6452N | | |
| (Appellant) | | (Respondent) |

| | | | |
|------------------------|-------------------------------------|----|------|
| Appellant by: | Shri Rakesh Garg, Advocate | | |
| Respondent by: | Shri R. R. N. Shukla, Addl. CIT- DR | | |
| Date of hearing: | 04 | 11 | 2025 |
| Date of pronouncement: | 30 | 01 | 2026 |

ORDER

PER NIKHIL CHOUDHARY, ACCOUNTANT MEMBER.:

This is an appeal filed by the assessee against the order of the learned Commissioner Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 30.03.2024, passed u/s 250 of the Income Tax Act, 1961 ("Act", for short) for the A.Y. 2017-18 wherein the Ld. CIT(A) has dismissed the appeal of the assessee, that were filed against the order of the Assessing Officer (AO) u/s 143(3) of the Act dated 09.12.2019. The grounds of appeal are as under: -

"01. Because the assessment order passed u/s 143(3) dated 09.12.2019 not being passed, as per the provisions of section 143(3) inclusive of selection of the case, the same is bad in law, the NFAC, without appreciating the facts has held the same to be valid, the assessment being bad in law, the same be quashed.

02. Because the NFAC has erred on facts and in law in upholding the addition of Rs. 36,07,338/- u/s 68 of the Act which addition is contrary to facts, bad in law be deleted.

03. Because the NFAC has failed to appreciate, the nature of business carried on by the assessee, the return having been filed alongwith audited accounts, the books of account having not being rejected, the purchases and sales having being

accepted, the income returned having being accepted, there was no reason for the NFAC to uphold the addition of Rs. 36,07,338/- made u/s 68 of the Act specially when the said amount is part of the sale proceeds and the cash deposited is out of the regular books of accounts, the addition made by the AO and upheld by the CIT(A) being without any basis, totally unwarranted the same be deleted.

04. Because the CIT(A) has erred on facts and in law in upholding the provisions of section 115BBE which provisions are not applicable for the reasons that there is no dispute that the cash deposited in bank is part of the sale proceeds and is out of the balances appearing the books of account which is neither unexplained nor undisclosed.”

2. It is observed that the appeal of the assessee was delayed by 77 days. The assessee has filed a condonation petition submitted that the delay was on account of the sudden demise of the Advocate Shri S. C. Agarwal, who left for his heavenly abode on 03.02.2024 and after demise the assessee could not follow up the matter as he was utterly confused and not even aware of the pending matters. Subsequently, with the assistance of his office people, the assessee came to know of the appeal order and was advised to engage some other professional. It has been submitted that since there was no deliberate intention of delaying the appeal, and the delay had taken place on account of unavoidable circumstances, the delay may kindly be condoned. After considering the circumstances narrated, we deem it appropriate to condone the delay in the filing of the appeal and we admit same for adjudication.

3. The facts of the case are that the assessee deposited the specified bank notes to the extent of Rs.40,00,000/- on 12.11.2016 in account no. 015102000019628 in IDBI Bank, Gomti Nagar Lucknow. Notices u/s 142(1) of the Act were issued to the assessee to explain the source of above cash deposited. It was submitted that the cash deposited was through the receipt of sale proceeds. The Assessing Officer noted that the sales made by the assessee during the F.Y. 2016-17 were to the extent of Rs.1,57,03,771/- and out of the total sales, sales of

Rs.61,34,578/- were made in cash. He computed the average daily cash sales in the F.Y. 2016-17 to Rs.16,807/- per day. He observed that in the month of Oct, 2016, the cash sales had jumped in disproportionate manner. The assessee had also not submitted any invoices of above sales and the Assessing Officer recorded that he was not able to ascertain the identity of the customers so as to determine the genuineness of these transactions. A majority of the sales were below the limit of Rs.2,00,000/- and therefore the mandatory requirement of quoting the PAN number was not there. Accordingly, the Assessing Officer came to the conclusion that a sum of Rs.36,07,338/- should be disallowed as unexplained cash credits. He placed reliance on the judgment of the Kerala High Court in the case of Oceanic Products exporting Co. vs CIT (2000) 241 ITR 497 (Ker) and the decision of the Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif vs CIT (1963) 50 ITR 1 and in the case of Sumati Dayal vs CIT 214 ITR 801 (SC) to hold that the explanation submitted by the assessee for the cash deposits in his bank account was not satisfactory, and therefore, added back a sum of Rs.36,07,338/- u/s 68 of the Act.

4. Aggrieved with the said order, the assessee went before the Ld. CIT(A), the Ld. CIT(A) records in his order that at the appellate stage, the assessee had not furnished any written submission in support of the claim. No arguments were advanced by the assessee, either in the statement of facts or in the grounds of appeal, to rebut the applicability of the deeming provisions invoked by the Assessing Officer. Therefore, since the assessee chose not to furnish any cogent explanation for the cash deposits along with reliable evidence, despite opportunities granted during

the appellate proceedings, the Ld. CIT(A) recorded that he was left with no alternative but to presume that the assessee had no further submissions to make in support of the averments raised in the grounds of appeal. Accordingly, he decided the grounds of appeal on the basis of the material available on record and, after discussing the findings of the Assessing Officer and the judicial decisions relied upon by him, recorded his disinclination to interfere with the decision of the Assessing Officer.

5. The assessee is aggrieved at this summary disposal of the appeal by the Ld. CIT(A), Shri Rakesh Garg, Advocate (hereinafter none as the "Ld. AR") appearing on behalf of the assessee submitted that the Ld. CIT(A) has not granted proper opportunities to the assessee before deciding the case. He drew our attention to the order passed by the Ld. CIT(A) and pointed out that only two notices were issued over a span of about three and a half years. The Ld. CIT(A) granted one month time to respond to the first notice and only one day to respond to the second notice. Thereafter, the Ld. CIT(A) proceeded to dismiss the appeal of the assessee without appreciating the fact that, during the relevant assessment year, the assessee had declared sales of Rs.1,57,03,771/- with a net profit rate of 10.83%, which was substantially higher than the net profit rate of 7.45% declared in the immediately preceding year, and also higher than the total sales disclosed in the previous year. The Ld. CIT(A) failed to appreciate the fact that the Assessing Officer had not disputed either the purchases or the sales before making the impugned addition and had also not raised any query regarding the stock position. The addition was made merely on suspicion of cash sales. The Ld. AR pointed out that, since the sales had already

been duly recorded and offered to tax, the addition resulted in double taxation of the same income. It was further submitted that the deposits in the said bank account stood fully explained by the sale of existing stock and, therefore, the provisions of section 68 of the Act were not applicable. Accordingly, he prayed that, as the order of the Assessing Officer was devoid of any factual or legal basis, the addition so made, deserved to be deleted.

6. On the other hand, Shri R. R. N. Shukla, Ld. Sr. Departmental Representative, submitted that the assessee was afforded sufficient opportunities by the Assessing Officer to respond to the queries raised during the assessment proceedings. After considering the responses furnished by the assessee, the Assessing Officer concluded that the pattern of sales during the year under consideration was abnormal when compared with the results of the preceding year. For this reason, he came to the conclusion that the amounts deposited in the bank account could not have arisen out of sales and, accordingly, made an addition u/s 68 of the Act. The Ld. Sr. Departmental Representative therefore submitted that no interference was called for in the order passed by the lower authorities.

7. We have duly considered the facts and circumstances of the case. A perusal of the impugned appellate order itself reveals that the assessee was not afforded a due and reasonable opportunity of being heard by the Ld. CIT(A). It is evident from the record that only two notices u/s 250 of the Act were issued to the assessee. The first notice dated 29.12.2020 granted a response time of about one month, whereas the subsequent notice dated 28.03.2024 afforded merely one day to submit a

response. We failed to understand that when the Ld. CIT(A) could wait nearly three and half years for issuing the second notice u/s 250 of the Act, what was the hurry to finalize the appeal order within the period of two days of the issue of the last notice. In the circumstances, it is apparent that the assessee was not afforded a proper opportunity to represent his case, and the Ld. CIT(A) failed to consider the issues raised by the Ld. AR before holding the additions to be unexplained. We, therefore, restore the matter to the file of the Ld. CIT(A) with a direction to afford the assessee a reasonable opportunity to submit the necessary evidences demonstrating that the credits reflected in his bank account pertain to the sale of stock which were duly recorded in the stock register and properly accounted for in the final accounts accompanying the return of income. Thereafter, the Ld. CIT(A) may pass a fresh order in accordance with law.

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

Order pronounced in the open Court on 30/01/2026.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

DATED: 30/01/2026

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

// True Copy//

By order
Sr. Private Secretary
ITAT, Lucknow