

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

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

**ITA No. 203/Agr/2024
Assessment Year: 2017-18**

Mr. Sachin Kumar Dixit, 4/11, Nunhai Street, Nunhai, Farrukhabad-209625 , U.P.	v.	Income-tax Officer, Ward 4(2)(2), Farrukhabad, U.P.
PAN : CLEPD8612C		
(Appellant)		(Respondent)

Assessee by	Sh. Sahib P. Satsangi, C.A.
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	20.01.2025
Date of pronouncement	19.02.2025

ORDER

PER RAMIT KOCHAR, AM:

This appeal in ITA No. 203/Agr/2024 for the assessment year 2017-18 has arisen from the appellate order dated 16.04.2024 [DIN & Order No. ITBA/NFAC/S/250/2024-25/1064124640(1)], passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which appeal before Id. CIT(A) in turn has arisen from the assessment order

dated 19.11.2019 passed by Assessing Officer u/s. 144 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. That having regard to facts and circumstances of the case the learned CIT(A) NFAC has erred both on facts and in law in dismissing the appeal exparte and upholding the addition of Rs. 12,94,000 made under section 69A of the Income Tax Act, 1961 on account of no response of the appellant towards two notices posted for fixation of appeal considering the fact of exparte assessment completed under section 144 of the Act in violation to principles of natural justice. The order passed is liable to be quashed/set aside.

2. That having regard to facts and circumstances of the case the no addition under section 69A of the Income Tax Act, 1961 in respect of cash deposited of Rs. 8,90,000 in Syndicate bank account no. 8665991000061 towards repayment of bank loan and cash deposit of Rs. 1,48,000 in Syndicate bank account no. 86652010022428 during demonetisation period and Rs. 41,000 during pre and post demonetisation period totaling to Rs. 10,79,000 should have been made considering the nature of small business carried out by him available in the records of the department based on the income returns filed by the appellant in the earlier years declaring income on presumptive bases under section 44AD of the Income Tax Act, 1961. The addition made is liable to be deleted.

3. That having regard to facts and circumstances of the case the no addition under section 69A of the Income Tax Act, 1961 in respect of deposits of Rs. 1,45,000 in Syndicate bank account no. 8665991000061 towards repayment of bank loan and deposit of Rs. 70,000 in Syndicate Bank account no. 86652010022428 totalling to Rs. 2,15,000 considering the nature of bank receipts. The addition made is liable to be deleted.

4. That having regard to facts and circumstances of the case the learned authorities below have erred both on facts and in law in invoking provisions of substituted section 115BBE of the Income Tax Act, 1961 thereby charging rate of 60 percent without addressing that the said section was substituted by the Taxation Laws (Second

Amendment) Act, 2016 which received the assent of 16th December, 2016 prior to which the charging rate was 30 percent.

5. That the appellant craves the leave to add, amend, modify, delete any grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.”

3. The brief facts of the case are that the Revenue was in possession of information that during the demonetization period, the assessee has deposited cash of Rs.8,90,000/- and Rs.1,48,000/- in bank account No. 86659910000061 and 86652010022428 respectively , maintained with Syndicate Bank, Farrukhabad. Assessing Officer obtained the bank statements directly from the bank. Assessing Officer observed that bank account No. 86659910000061 was a loan account opened on 27.05.2016 with debit balance of Rs.10 lakhs, wherein total credit was to the tune of Rs.10,35,000/-, out of which loan advance payment to the tune of Rs.3,50,000/- and Rs.5,40,000/- was made by the assessee in cash on 01.12.2016 and 14.12.2016 respectively , and the said bank account stood closed on 07.02.2017. Assessing Officer observed that in the other bank account no. 86652010022428, the assessee has deposited Rs.2,59,978.91, out of which Rs.1,48,000/- was deposited in cash during demonetization period and Rs. 70,000/- by way of credits, and further an amount of Rs. 978.91 was credited by way of interest. The AO observed that pattern of cash deposits during demonetization period

as well post demonetization period was different. The AO further observed that the assessee did not file his return of income with department. The Assessing Officer issued notices u/s. 142(1), but there were no compliance by the assessee. Show cause notice u/s. 144 were also issued by the AO to the assessee. The assessee did not comply with the notices and the Assessing Officer made addition of Rs.12,94,000/- (Rs. 8,90,000/- and Rs. 1,89,000/- being cash deposited in the two bank accounts and Rs. 1,45,000/- and Rs. 70,000/- by credit other than cash deposits in the above two accounts) in the hands of the assessee u/s. 69A read with section 115BBE of the Act with respect to the cash deposits in the bank account as well as other credit entries in the said bank accounts vide best judgment assessment order passed by the AO u/s. 144.

4. Aggrieved, the assessee filed first appeal with the CIT(Appeals). The CIT(Appeals) dismissed the appeal of the assessee as the assessee had not participated in the assessment proceedings as well in the appellate proceedings , and as the assessee could not submit satisfactory explanations with regard to the nature and source of cash deposits , the learned CIT(A) dismissed the appeal filed by the assessee.

5. Still aggrieved, the assessee has filed second appeal with ITAT, and the Id. Counsel for the assessee submitted that it is an ex-parte best

judgment assessment order passed by the Assessing Officer, and even the Id. CIT(Appeals) has passed an ex-parte appellate order. It is submitted that the assessee was in the business of retail trade of daily needs. The assessee has filed return of income for the assessment year 2015-16 and 2016-17, declaring income under presumptive scheme of taxation u/s 44AD. It was submitted that income for the impugned assessment year was below taxable limits, and hence return of income was not filed. Thus, for the impugned assessment year, no return of income was filed u/s 139 by the assessee. Our attention was drawn to the return of income filed for the assessment year 2015-16 , wherein the assessee has shown his business as retailer and the assessee has invoked presumptive scheme of taxation u/s. 44AD of the Act. It was submitted that both the authorities below have brought to tax the entire credits in the bank account for the year under consideration , which is not appropriate. Our attention was drawn to proviso to section 251(1)(a) of the Act which was introduced by Finance Act, 2024 wef 01.10.2024, and it was submitted that now even the Id. CIT(Appeals) has been given powers to set aside the matter back to the file of Assessing Officer for making de-novo assessment in case an assessment order is passed u/s. 144 of the Act. Thus, prayers were made to restore the matter back to the file of Assessing Officer.

6. Learned Sr. DR, on the other hand, submitted that there is non-compliance by the assessee before the Assessing Officer as well as Id. CIT(Appeals). There were cash deposits in the bank accounts and the assessee could not offer any explanation. The assessee is referring to the Income-tax Returns for the assessment year 2015-16 and 2016-17, but the same were filed on 21.05.2016, which is just 4-5 days prior to disbursement of loan of Rs.10,00,000/-, on 27.05.2014. It was submitted that these return of income were filed only for the purpose of taking loan from the bank. The assessee could not prove that the assessee is in retail business. Prayers were made to confirm the order of Id. CIT(Appeals).

7. Learned counsel in the rejoinder submitted that the ITRs were filed for the assessment years 2015-16 and 2016-17 , and the assessee was engaged in small retail business. The assessee invoked the presumptive taxation scheme u/s. 44AD. There were no taxable income for assessment year 2015-16 and 2016-17. Similarly, it was submitted that there is no taxable income for the year under consideration. It was submitted that the authorities below have added the entire credits including cash deposits in the bank account as the income of the assessee.

8. We have considered rival submissions and perused the material on record. We have observed that the assessee has not filed return of income for the impugned assessment year. The Revenue was having information that during the demonetization period, the assessee has deposited cash of Rs.8,90,000/- and Rs.1,48,000/- in the two bank accounts maintained by the assessee with Syndicate Bank, Farrukhabad.. Assessing Officer obtained bank statements directly from the bank. Statutory notices were issued by the AO to the assessee u/s. 142(1) and 144 of the Act from time to time during the course of assessment proceedings. Assessee did not submit any reply during the course of assessment proceedings and best judgment assessment u/s. 144 was framed, wherein total credits to the tune of Rs.12,94,000/- in the two bank accounts of the assessee with Syndicate Bank, Farrukhabad were added to the income of the assessee and were brought to tax by the AO u/s. 69A read with section 115BBE of the Act, being unexplained money. Learned CIT(Appeals) dismissed the appeal of the assessee ex-parte because of non prosecution of the appeal by the assessee. The assessee during the course of proceedings before the Bench has submitted that the assessee is in the small retail trade. The assessee has submitted that there was no taxable income, hence, no ITR was filed for the year under consideration. The assessee has produced before the

Bench , ITRs for the assessment years 2015-16 and 2016-17, in which the assessee has claimed to be in retail business. Returns were filed on 21.05.2016, and in the said return of income presumptive scheme of taxation u/s 44AD was stated to be invoked by the assessee. The assessee has claimed that for the year under consideration , the turnover being from retail trade is covered u/s 44AD, and there will be no tax payable by the assessee. Plea of the assessee needs verification. The assessee has also relied upon the decision of Hon'ble Gujrat High Court in the case of CIT v. Pradeep Shantilal Patel (2014) 42 taxmann.com 2 (Gujrat) and order of ITAT, Surat in the case of Smt. Kiran Vallabhai Ahir v. ITO (ITA No. 65/SRT/2017) dated 10.02.2020 . The assessee has claimed that the assessee is liable to tax u/s. 44AD of the Act since the turnover is around Rs.12,94,000/- , and the assessee's income comes to Rs.99,220/-, which is below the threshold limit , and hence it is claimed the assessee is not liable to file income tax return and pay taxes. This plea of the assessee requires verification. Both the orders passed by the authorities below are ex parte orders. Now, the assessee has come forward to explain its case. The additional evidences filed for the first time before the ITAT needs verification. Onus is on the assessee to prove and substantiate that the assessee is in retail business, and is eligible to claim presumptive scheme of taxation u/s 44AD. Thus, in the interest of

justice and fairness to both the parties, the orders of the authorities below are set aside and the matter is restored back to the file of Assessing Officer for framing de novo assessment. The assessee is also directed to cooperate in de novo assessment proceedings before the Assessing Officer and in default, the Assessing Officer shall be free to pass the order in accordance with law after giving proper opportunity of hearing to the assessee. We clarify that we have not commented upon the merits of the issues. We order accordingly.

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

Order pronounced in the open court on 19.02.2025.

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

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

Dated: 19.02.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra