

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.142/Lkw/2021
Assessment year:2017-18

Ms. Hardeep Kaur, C/o Ayyubi Chamber, Raniganj, Lakhimpur Kheri. PAN:ALLPK7186M (Appellant)	Vs.	Income Tax Officer, Range-3(4), Lakhimpur Kheri. (Respondent)
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Appellant by	Shri K. R. Rastogi, C.A. Shri Shubham Rastogi, C.A.
Respondent by	Shri Harish Gidwani, D. R.
Date of hearing	06/07/2022
Date of pronouncement	20/07/2022

ORDER

This is an appeal filed by the assessee against the order of learned CIT(A) dated 11/10/2021 pertaining to assessment year 2017-18. In this appeal the assessee has taken the following grounds of appeal:

- "1. The Ld. C.I.T.(A), National Faceless Appeal Centre (NFAC) erred on facts & in law in upholding the addition of Rs.10,24,000/- being cash deposited in Bank on different dates during demonetization period in three bank accounts out of cash in hand being Income from Agriculture activities, Receiving from Transport Business and out of accumulated past savings.
2. The Ld. C.I.T. (Appeals) failed to appreciate that Assessee has offered income u/s 44AD being Gross Receiving Rs.67,69,491/- and has shown Income Rs. 7,50,000/- which has accepted by Ld. A.O. However, Ld. A.O. again made the addition of

Rs.10,24,000/- u/s 69A r.w.s. 115 BBE of I.T. Act being cash deposited during demonetization period without appreciating that Cash was deposited out of business receiving, Agriculture activities and accumulated past savings available as cash in hand as on date of demonetization. Thus, no addition can be made in the present sets of facts and circumstances.

3. The addition upheld is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by Ld. C.I.T.(A)."

2. Learned counsel for the assessee, at the outset, invited my attention to the petition for condonation of delay of 18 days and submitted that the order by learned CIT(A) was passed on 11/10/2021 and was served on the e-mail of the assessee's counsel. It was submitted that when the counsel of the assessee informed the assessee that an order has been served from the e-mail of learned CIT(A), only then the assessee became aware of the fact of an adverse order by learned CIT(A) and she immediately contacted her lawyer to file the appeal but due to ill health of the local counsel of the assessee, she was not able to provide necessary documents for filing the appeal before the Tribunal and hence, there has occurred delay of 18 days. Learned counsel for the assessee submitted that since the delay has occurred because of no fault of the assessee and delay being unintentional, it may be condoned and appeal be heard on merits. Learned D. R. did not raise any objection regarding condonation of delay and finding the reason for delay in filing the appeal as plausible, the delay was condoned and Learned counsel for the assessee was asked to proceed with his arguments.

3. Learned counsel for the assessee submitted that the assessee is in transport business and is also earning income from agriculture and has been filing the return of income for the last more than 10 years and the returns are being filed under the provisions of section 44AD of the Act. It was

submitted that during the year under consideration, the assessee had deposited an amount of Rs.12,24,000/- in cash in three different bank accounts which she had received on account of agricultural income and on account of income from transport business which generally happens in cash only. It was submitted that in total an amount of Rs.67,69,000/- including cash, was deposited in the bank accounts on which the assessee declared a net income of Rs.7,50,000/- u/s 44AD of the Act. Learned counsel for the assessee submitted that the Assessing Officer held that the cash available with the assessee for deposit in the bank accounts was not explainable and further held that such cash was deposited in the bank account of the assessee during the demonetization period and therefore, he made the addition after granting relief of Rs.2,00,000/-. It was submitted that during the same year before the demonization period, the assessee had made deposits in the bank account to the extent of Rs.27,79,000/- which has been accepted by him and only cash deposited during demonization period has not been accepted. It was submitted that the submissions made by the assessee before the Assessing Officer stating therein that the cash deposited was out of business receipts was not accepted by the Assessing Officer whereas the fact remains that in the immediately previous year also there were total cash deposits in the bank and total of cash receipts in the immediately previous year was Rs.62 lacs and the assessee had declared Rs.5 lac u/s 44AD of the Act. It was submitted that during the immediately preceding year, the assessment was completed u/s 143(3) of the Act vide order dated 17/12/2018 and Assessing Officer had accepted the return of income and has noted in the assessment order that the assessee had shown agriculture income and had earned income from commercial vehicle. It was submitted that during the year under consideration also, similar receipts were there and simply because the deposits were made in the

demonetization period, does not mean that the assessee had not declared this income in her regular business. Therefore, it was prayed that the appeal filed by the assessee may be allowed.

4. Learned D. R., on the other hand, heavily placed reliance on the orders of the authorities below and submitted that the cash deposits were made in the three bank accounts, maintained by the assessee, during the demonetization period itself and the amount involved in huge and therefore, it cannot be said that the said amount was out of business receipts and rather it can safely be concluded that the said amount was past undeclared income of the assessee.

5. Learned counsel for the assessee, in his rejoinder, submitted that besides the income declared by the assessee on presumptive basis, the husband of the assessee also was a regular income tax payee and in this respect our attention was invited to pages 47 to 49 of the paper book where the copies of returns of husband of the assessee for assessment year 2015-16 to 2017-18 was placed. In view of the totality of the facts and circumstances, it was submitted that since both the husband and wife were running transport business and the assessee was having agriculture income and therefore, the action of learned CIT(A) in upholding the addition is not justified.

6. I have heard the rival parties and have gone through the material placed on record. I find that the assessee during the year under consideration declared total receipts from truck business to the tune of Rs.67,69,491/- which is also the total of all the credits in the three bank accounts maintained by the assessee. The assessee has declared net income of Rs.7,50,000/- on presumptive basis u/s 44AD of the Act. The

total receipts declared by the assessee in her return of income included Rs.10,24,000/- which was deposited in the bank account in cash. The only reason for not accepting the contention of the assessee that such deposits were part of business receipts is that the assessee had deposited these amounts in cash during the demonetization period. While holding so the authorities below have ignored the fact that in the same year before the demonization period started i.e. from 01/04/2016 to 08/11/2016, there was cash deposits of Rs.27,79,000/- which fact is apparent from the order of learned CIT(A) where he has noted this fact of having deposited such amount in cash during these dates. If in the same year, cash of Rs.27,79,000/- can be accepted to be belonging to the business and has been accepted to be part of business receipts, there cannot be reason that a sum of Rs.10,24,000/- in the same year should not be accepted as income from the same business. Moreover, I find that in the immediate preceding year, the assessee had declared total receipts of Rs.62 lacs and all of the receipts were in cash and Assessing Officer during assessment proceedings had accepted the net income declared by assessee. A copy of assessment order dated 17/12/2018 is placed in paper book page 35. The fact that in the preceding year all receipts were in cash is verifiable from the copy of reply filed by assessee, a copy of which is placed in paper book page 34.

6.1 The nature of business run by the assessee is transport business and agricultural income and in both businesses, there is a pre dominant role of cash. Moreover, I find that the assessee's husband is also old income tax payee like the assessee which fact is verifiable from pages 47 to 49 of the paper book where the copies of returns of income of her husband are placed. The assessee has been declaring her income on presumptive basis every year and therefore, there is no justification in the action of learned

CIT(A) by which he has upheld the addition. In view of the above, the addition sustained by learned CIT(A) is deleted and the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 20/07/2022)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:20/07/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar