

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.108/Alld./2020
Assessment Year: 2017-18

Income Tax Officer, Ward-2(1), Allahabad, U.P.	v.	Tilak Proficient Nidhi Limited, W-11, Cooper Road, Civil Lines Allahabad, 211001 UP.
		PAN:AADCT0970C
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A.K. Singh, Sr. D.R.
Date of hearing:	14.07.2022
Date of pronouncement:	21.07.2022

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal, filed by Revenue, being ITA No.108/Alld./2020, is directed against an appellate order dated 22.09.2020 in Appeal No. CIT(A), Allahabad/10695/2019-20 passed by learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"), for assessment year(ay):2017-18, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 24th December, 2019 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3) of the Income-tax Act,1961(hereinafter called "the Act")(DIN & Order No. ITBA/AST/S/143(3)/2019-20/1023039385(1).

2. The grounds of appeal raised by Revenue in ITA No. 108/Alld./2020 for assessment year 2017-18, in memo of appeal filed with Income-Tax Appellate

Tribunal, Allahabad Bench , Allahabad(hereinafter called “ the tribunal”) , reads as under:-

1. The Ld. CIT(A) has erred in deleting the additions of Rs. 10,40,000/- made on account of unexplained deposit u/s 69A, without appreciating the facts that the assessee, during the assessment proceedings, has failed to offer explanation as regards to the nature & source of cash deposits to the tune of Rs. 10,40,000/- (Rs. 6,90,000/- + Rs. 3,50,000/-).

2. The Ld. CIT(A) has erred in deleting the addition of Rs. 7,75,263/- made on account of addition in capital assets, without appreciating the facts that the assessee, during the assessment proceedings, has failed to furnish evidences of additions to capital assets during the year under consideration.

3. The Ld. CIT(A) has erred in deleting the addition of Rs. 1,32,52,536/- made u/s 69A, without appreciating the facts that the assessee, during the assessment proceedings, has failed to offer explanation about the source of funds utilized to purchase FDRs in the year under consideration.

4. Right is reserve to alter, modify and to file any fresh ground of appeal.”

3. The brief facts of the case are that the assessee filed its return of income, for assessment year 2017-18 , on 20th October, 2017 declaring income of Rs 9,94,780/-. The assessee has claimed to be engaged in business of financial services. The case of the assessee was selected by Revenue for framing scrutiny assessment. The notice dated 09.08.2011 under Section 143(2) of the 1961 Act were issued by AO to assessee through e-mail and Post. In response thereof the assessee’s counsel Shri Bhuvnesh Kesarwani , CA filed his Power of Attorney, copy of ITR, Audit Report and Bank details of Account No. 450920110000007 of Bank of India and Account No. 38040200000024 of Bihar Gramin Bank through e-mail , sent to AO. The AO issued notice dated 30.10.2019 under Section 142(1) through e-mail calling for various information, but the assessee did not comply with the said notice and no details as called for was submitted by assessee before the AO, which led AO to issue fresh notice dated 16.12.2019 which again remained

un-complied with by the assessee. The AO proceeded to frame assessment based on material on record. While framing scrutiny assessment u/s 143(3) vide assessment order dated 24.12.2019 , the AO made three additions to the income of the assessee. The first addition was made by AO with respect to cash deposit made by the assessee in its Bank account with Dena Bank 1153110850 of Rs. 6,90,000/- and cash deposit made by assessee in its Bank Account with Dena Bank No. 115351031248 of Rs. 3,50,000/- , which information was received by AO through IT Data Base System which in-fact was the reason for selection of the case of the assessee by Revenue for framing scrutiny assessment. The assessee has not offered any explanation before the AO with respect to aforesaid cash deposits in its bank accounts. The AO made second addition to the returned income of the assessee , to the tune of Rs. 32,563/- on account of additions to Furniture and Fittings during the year under consideration, and additions to the income was made by AO to the tune of Rs. 7,42,700/- on account of additions to Computers made during the year, which additions were made by AO based on increase of these assets in the Balance Sheet of the assessee. The assessee has not offered any explanation/evidence in support of the said increase. The AO made third addition to the income of the assessee to the tune of Rs. 1,32,52,536/- towards additions in the Fixed Deposits of the assessee during the year under consideration by invoking provisions of Section 69A , which information of the increase in the FDR were observed by AO from study of the Audit Report filed by the assessee , while the assessee has not offered any explanation of the same. The AO assessed the income of the assessee at Rs. 1,60,62,579/- as against the returned income of Rs. 9,94,779/-, vide assessment order dated 24.12.2019 passed by AO u/s 143(3) of the 1961 Act.

4. Aggrieved by assessment framed by AO , the assessee filed first appeal before Ld. CIT(A) , who was pleased to delete all the additions as in the opinion of the Ld. CIT(A) no additions deserved merit and the assessee has explained all the

additions as were made by AO, before Id. CIT(A). It was further observed by Id. CIT(A) that the AO made high pitched assessment and passed a non speaking non reasoned cryptic order in complete violation of principles of natural justice , and without specifying any of the discrepancies in the entries . Thus, in nut-shell Id. CIT(A) deleted all the additions as were made by the AO, vide appellate order dated 22.09.2020.

5. Aggrieved by appellate order passed by Id. CIT(A) granting relief to the assessee, the Revenue has come in appeal before the tribunal. This appeal came up for hearing before Division Bench(DB) earlier on as many as on eight occasions and on each such occasion , either none appeared on behalf of the assessee or an adjournment application was moved on behalf of the assessee. The DB was pleased to adjourn the hearing on all the earlier eight occassions . When this appeal came up for hearing before DB on 14th July, 2022, none appeared on behalf of the assessee nor any adjournment application was filed on behalf of the assessee. The DB decided to adjudicate this appeal on merit , after hearing Departmental Representative . The Ld. Senior DR drew our attention to assessment order and submitted that the cash was deposited by assessee in its bank account, and no details were furnished by the assessee as to source of cash deposits , and hence the addition was made by AO to the income of the assessee to the tune of Rs. 10,40,000/- . It was submitted that the assessee did not comply with various notices issued by AO u/s 142(1) of the 1961 Act, and no details were submitted by assessee before the AO in compliance thereof to details called for by AO in its notices u/s 142(1). It was submitted that the AO made additions to Furniture and Fixture as well Computer , based on the increase in balance as at year end in the Balance Sheet, as the assessee did not co-operated in assessment proceedings and did not furnish any details. It was further submitted by Id. Sr. DR that since there was no compliances by assessee and there was complete non co-operation by assessee, the AO based on information gathered from audit report, made additions

towards increase in FDR during the year under consideration . The ld. Sr. DR drew our attention to the appellate order passed by ld. CIT(A) and submitted that the assessee filed detail before ld. CIT(A) for the first time in order to explain the additions, which were not filed by assessee before the AO . It was submitted that ld. CIT(A) accepted the contentions as well additional evidences filed by assessee , without calling for remand report / comments from AO, and thus there is a breach/infringement of Rule 46A of the Income Tax Rules, 1962.

6. We have perused the material on record and heard the contentions of ld. Sr. DR. We have observed that the assessee filed its return of income on 28.10.2017 , declaring income of Rs. 9,94,780/- . The return of income was selected by Revenue for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act. The reason for selection of the assessee's case for framing scrutiny assessment was depositing of cash in its bank accounts maintained with Dena Bank. The AO issued statutory notices u/s 143(2) dated 09.08.2011 via email and post. The assessee's CA filed his power of attorney, Copy of ITR, audit report and details of Bank Account No. 450920110000007 of Bank of India and Account No. 38040200000024 of Bihar Gramin Bank , through e-mail sent to AO. The AO issued further notices u/s 142(1) of the 1961 Act , but henceforth there were no compliances by the assessee and even bank statements of Dena Bank which led to selection of case of the assessee for scrutiny were not filed. The AO made three additions to the income of the assessee. The first addition was made by AO with respect to cash deposit made by the assessee in its Bank account with Dena Bank numbering 1153110850 of Rs. 6,90,000/- and cash deposit made by assessee in its Bank Account No. 115351031248 of Rs. 3,50,000/- maintained with Dena Bank, which information was received by AO through IT Data Base System which infact was the reason for selection of the case of the assessee for framing scrutiny assessment. The assessee did not offered any explanation before the AO with respect to aforesaid cash deposits in its bank accounts. The AO made second

addition to the returned income of the assessee , to the tune of Rs. 32,563/- on account of additions to Furniture and Fittings during the year under consideration, and additions to the income was made by AO to the tune of Rs. 7,42,700/- on account of additions to Computers made during the year, which additions were made by AO based on increase of these assets as is reflected in the Balance Sheet of the assessee. The assessee did not offered any explanation/evidence before AO in support of the said increase in fixed assets . The AO made third addition to the income of the assessee to the tune of Rs. 1,32,52,536/- towards additions in the Fixed Deposits of the assessee during the year under consideration by invoking provisions of Section 69A , which information of the increase in the FDR were observed by AO from study of the Audit Report, and the assessee did not offered any explanation of the same. The AO assessed the income of the assessee at Rs. 1,60,62,579/- , as against the returned income of Rs. 9,94,779/- . The assessee filed first appeal before Id. CIT(A) and filed explanations / evidences before Id. CIT(A) for the first time, in its defense. These contentions/evidences were never filed by assessee before the AO , as there was complete non compliance by assessee during assessment proceedings as no details were filed. Thus, these evidences were filed by assessee for the first time before Id. CIT(A), which are in the form of additional evidences. The Id. CIT(A) simply accepted all the contentions /additional evidences filed by the assessee , without complying with Rule 46A of the 1962 Rules, as it was incumbent on Id. CIT(A) to have forwarded all these additional evidences/explanations filed by assessee to the AO for its remand report/comments/rebuttal. Thus, there is clearly a breach of Rule 46A of the 1962 Rule, which had made appellate order passed by Id. CIT(A) unsustainable in the eyes of law. The Id. CIT(A) failed to appreciate that except copy of ITR, Audit Report and details of Bank Account No. 450920110000007 of Bank of India and Account No. 38040200000024 of Bihar Gramin Bank, the assessee has not filed any other details called for by AO and there was complete non co-operation by

assessee. The 1961 Act is a code in itself. The purpose of framing scrutiny assessment is to see that the tax-payer has complied with various provision of the 1961 Act, and the correct income as computed under the provisions of the 1961 Act is brought to tax. Thus, the finding of Id. CIT(A) that the AO has made high pitched assessment by passing a non-speaking and non-reasoned cryptic order without complying with principles of natural justice , were unwarranted and factually incorrect keeping in view non co-operative attitude adopted by the assessee at the assessment stage wherein the assessee chose not to file any details called for by the AO . Under these circumstances, we hold that the appellate order passed by Id. CIT(A) is not sustainable in the eyes of law and is hereby set aside, and matter is restored back to the file of Id. CIT(A) for fresh adjudication on merits in accordance with law. Needless to say that powers of Id. CIT(A) are co-terminus with powers of the AO. The Id. CIT(A) shall give proper and adequate opportunity of being heard to the assessee as well AO , in set aside proceedings. If the assessee did not co-operate in set aside proceedings , the Id. CIT(A) shall be free to decide on merit. The appeal of the Revenue is allowed for statistical purposes. We order accordingly.

7. In the result, appeal filed by Revenue in ITA no. 108/Alld/2020 for ay: 2017-18 , is allowed for statistical purposes.

Order pronounced in Open Court on 21/07/2022 at Allahabad.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 21/07/2022

Kd Azmi

Copy forwarded to:

1. Appellant –Income Tax Officer, Ward-2(1), Allahabad
2. Respondent – Tilak Proficient Nidhi Limited, W-11, Cooper Road, Civil Lines Allahabad, 211001 U.P.
3. CIT(A) –Aayakar Bhawan, Civil Lines, Allahabad, U.P.
4. CIT, Allahabad, U.P.
5. The Id. Sr. DR. ITAT, Allahabad, U.P.

By Order
Assistant Registrar

