

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD  
(THROUGH VIRTUAL COURT)  
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 185/ALLD/2015  
Assessment Year: 2009-10

Sri Bachanu Ram, Saketpuri Colony, Sabri, Mirzapur,U.P.	v.	ITO, Range - III(1), Mirzapur, U.P.
PAN: BEQPS 3977 K		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, CA
Respondent by:	Shri A. K. Singh, Sr. DR
Date of hearing:	03. 12. 2020
Date of pronouncement:	04 .12. 2020

**ORDER**

**PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal, filed by assessee, being ITA No. 185/Alld/2015, is directed against appellate order dated 23.01.2015 in Appeal No. 23/ITO/R-III(1)/MZP/12-13 passed by learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"), for assessment year(ay):2009-10, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 24.09.2012 passed by learned Assessing Officer (hereinafter called "the AO") u/s 147/143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for ay: 2009-10. It is observed that the aforesaid appeal in ITA No. 185/Alld./2015 for ay: 2009-10 was earlier dismissed ex-

parte in the absence of assessee by Income Tax Appellate Tribunal, Allahabad Bench, Allahabad ( hereinafter called the “ tribunal” ) , vide appellate order dated 31.12.2015. The aforesaid appellate order dated 31.12.2015 was recalled by tribunal in MA No. 32/Alld/2016 , vide order dated 12.07.2018. We have heard both the parties through video conferencing mode through virtual court.

2. The grounds of appeals raised by assessee in memo of appeal filed with the tribunal, reads as under :

*“1. That in any view of the matter order passed u/s 147/143(3) on income of Rs. 13,06,420/- is bad both on the facts and in law.*

*2. That in any view of the matter notice u/s 148 Issued on the basis of AIR information is not correct and as per the assessee information and the said notice was not served on the assessee nor assessee has any information about the service of notice hence in absence of proper service assessment was made is illegal.*

*3. That in any view of the matter there was no escapement of income hence the action taken u/s 147 by issue of notice u/s 148 is not a judicious act on the part of department hence the entire action is bad in law.*

*4. That in any view of the matter in compliance to notice u/s 148 no return was filed but return filed subsequently in compliance to notice u/s 142(1) hence the mandatory requirement of service of notice of not complied with nor any reasons for supplied and therefore the entire assessment liable to be annulled.*

*5. That in any view of the matter addition of Rs. 12,30,000/- by saying unexplained investment u/s 69 as made by the assessing officer and confirm by the Commission(er) of Income Tax (Appeal) is highly unjustified.*

*6. That in any view of the matter the deposit in bank account are from definite sources and the amount belongs to various agriculturists but both the two lower authorities failed to provide reasonable opportunity to the assessee nor any chance was given to file the necessary details hence in absence of proper verification assessment made is illegal,arbitrary and bad in law.*

*7. That in any view of the matter interest charged under 234A, 234B, and 234C of the income tax act is section highly unjustified.*

*8. That in any view of the matter the appellant reserves his right to take any fresh ground of the appeal before hearing of the appeal.*

*It is therefore prayed that a suitable order may kindly be passed and relief may please be allowed accordingly”*

3. The brief facts of the case that the Revenue had an information received in its database that the assessee has invested/made transaction of Rs. 12,30,000/- during the previous year 2008-09. The Notice u/s 133(6) of the 1961 Act was issued by Revenue to the assessee. The assessee submitted before Revenue in reply to aforesaid notice that he is a 4<sup>th</sup> grade employee working in the office of Bhumi Sarankshan Adhikari. It was submitted by assessee in aforesaid reply that family members are agriculturist and having markettiers arranging the sale of agricultural produce. He further submitted that his salary income is deposited in separate bank account and he is having a separate bank account with Vijaya Bank , Mirzapur bearing number 714801011001075 in which cash of Rs. 12,30,000/-during the year under consideration was deposited . The copy of said bank account was filed with the Revenue. The AO issued notice u/s 148 of the 1961 Act and reasons for reopening of the assessment was supplied by the AO to the assessee. The assessee had earlier not filed return of income for the year under consideration with the Revenue u/s 139 of the 1961 Act , for which the assessee claimed that his salary income was below taxable limit as being Rs. 96,378/- and hence no regular return of income within provisions of Section 139 was filed for the year under consideration . Thus, the assessee had deposited cash of Rs. 12,30,000/ in the aforesaid Vijaya bank account during the previous year under consideration, which led to invocation of provisions of Section 147/148 of the 1961 Act . The assessee then filed return of income in pursuance to notice u/s 148 of the 1961 Act , declaring income of Rs. 76,415/- from salary. During reassessment proceedings, the assessee's contention was that the income from agriculture belonging to family members was deposited in cash in the bank account and the same was agricultural income of the HUF being exempt from income-tax, which contentions was rejected by AO as well as Ld. CIT(A) on the ground that there was no evidence that the income is agriculture income and it belong to the HUF. The assessee being aggrieved has now filed second appeal before the Tribunal.

The learned counsel for the assessee has filed Paper Book containing 16 pages in which he has filed written submissions , reply filed before the Ld. CIT(A) and the AO. The assessee has also filed copy of agriculture income agreement within the family , ( page no. 12 to 14/paper book) and it is on stamp paper of Rs. 100 bearing no. 559989 and 559990 , dated 10<sup>th</sup> February, 2008 . It is claimed before us by learned counsel for the assessee that the assessee vide the aforesaid agreement was responsible for taking care of agriculture operations for the family and thereafter for distribution of agricultural income amongst family members . It was submitted by ld. Counsel for the assessee that Revenue has not appreciated the issue in proper perspective and it was submitted that the matter can be restored back to the file of the AO for fresh adjudication wherein the assessee will file complete details of agriculture operations carried out by assessee on behalf of the family, proceeds of which were received in cash and were deposited in the aforesaid bank account. It was also submitted that cash deposited in the bank can be assessed on peak credit theory basis and not the entire amount deposited be brought to tax. Further, it is also claimed that the benefit of expenditure is also not allowed by Revenue The ld. DR, on the other hand, submitted that he has no objection if the matter be set aside back to the file of the AO and the assessee is given one more opportunity to explain cash deposit of Rs. 12,30,000/- in aforesaid bank account with Vijaya Bank, Mirzapur. After hearing both the parties and perusing the Paper Book filed by the assessee which is placed on record in file , and of the orders of the authorities below, we are of the considered view that one more opportunity be granted to the assessee and assessee is directed to produce before the AO, all the relevant evidences including agriculture income agreement dated 10.02.2008 claimed to be entered into between assessee and family member for managing of agriculture operations of family by the assessee, revenue records to justify owning of agricultural land by family members as well as agricultural produce records maintained with the village authorities for justifying agricultural operations carried on in the said land and evidence of sale of agricultural

produce during the year, before the AO for necessary verification by the AO . Thus, we are setting aside the orders of the authorities below and restoring the matter back to the file of AO for fresh adjudication of the issue denovo on merits in accordance with law. The AO is directed to provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law . The evidences/explanations filed by assessee in support of his contentions in set aside denovo proceedings shall be admitted by the AO and adjudicated on merits in accordance with law. We have observed from the records that the assessee is holding multiple PAN viz. BEQPS3977K (As per AO/CIT(A) order), AIYPR6777P(as per challan , dated 06.05.2015 for payment of appeal fee) and AGBPA 3337R (as per tribunal order dated 31.12.2015 in first round) and this aspect be also looked into by AO in second round of litigation, as directed by us. The assessee is directed to clarify this aspect of holding of multiple PAN , before the AO. Thus, the appeals of the assessee for ay: 2009-10 is allowed for statistical purposes, as indicated above.We order accordingly.

5. In the result, the appeal filed by the assessee with tribunal in ITA No. 185/Alld./2015 for ay: 2009-10 is allowed for statistical purposes, as indicated above.

Order pronounced on 04.12.2020 at Allahabad

Sd/-

[VIJAY PAL RAO]  
JUDICIAL MEMBER

DATED: 04/12/2020  
Biswajit

Copy forwarded to:

1. Appellant –Sri Bachanu Ram.

Sd/-

[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

2. Respondent - ITO, Range – III, Mirzapur.
3. CIT(A) -
4. CIT
5. DR -

By order  
Assistant Registrar