आयकर अपीलीय अधिकरण, "पटना " न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

I.T.A. No.33/Pat/2022
Assessment Year: 2017-18

SURESH PRASAD SHAH Phulhara Bazar Bidupur Bihar - 844502 **PAN : AWUPS3838E**	Vs	**CIT(Appeals), Delhi**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Lakshmi Kant Tiwari, Advocate
Revenue by :	Shri Rupesh Agrawal, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : **19/05/2022**
घोषणा की तारीख /**Date of Pronouncement** : **24/05/2022**

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, [hereinafter the "ld. First Appellate Authority"], dt. 16/11/2021, passed u/s 250 of the Income Tax Act, 1961 (in short "the Act") for the Assessment Year 2017-18.

2. The assessee has taken ten grounds of appeal. However, his grievance is that the ld. First Appellate Authority has erred in confirming the addition of Rs.12,70,100/- which was added by the Assessing Officer with the aid of Section 69A of the Act.

3. Brief facts of the case are that, the assessee did not file his return of income. However, the department was able to lay its hand on the information through Annual Report Wing, that the assessee had deposited a

sum of Rs.12,70,100/- at Axis Bank, Kuari Bujurg, Vaishali Branch in Account bearing no. 915020026096800. The Assessing Officer has issued a notice u/s 142(1) of the Act inviting the assessee to file its return of income. According to the Assessing Officer, the assessee failed to submit the return and the Assessing Officer proceeded to pass a best judgment assessment order u/s 144 of the Act, dt. 05/12/2019 determining the taxable income of the assessee at Rs.12,70,100/- *interalia* making addition of this amount u/s 69A of the Act on account of unexplained investment in the bank account.

4. Aggrieved, the assessee carried the matter in appeal before the ld. First Appellate Authority. On appeal, the assessee has submitted two explanation. He submitted that out of the total deposit, Rs.4,00,000/- was received from his father, Shri Shyam Lal Shah, which was given in two installments as a contribution towards the marriage of the assessee's daughter. An affidavit to this extent from his father has been filed. Similarly, he submitted that the sum of Rs.6,01,600/- was received from his brother Shri Ramesh Kumar Shah. A RTGS was made in favour of M/s. Triven Tracom Pvt. Ltd., for purchase of sugar, as the assessee was running a general store in a small village, namely, Phulhara. Thus, according to the assessee no addition should be made u/s 69A of the Act.

4.1. The ld. First Appellate Authority has observed that in response to the notice of hearing, the assessee did not submit the requisite details and did not participate in the proceedings. Accordingly, she dismissed the appeal.

5. The assessee came in appeal before us. The assessee has filed photostat copy of the affidavit sworn on 03/03/2021. A confirmation from Shri Ramesh Kumar Shah, has been placed in the paper book. The assessee has also placed copy of the bank statement with Axis Bank. The ld. Counsel

for the assessee raised two fold submission. He submitted that the assessee is running a *kirana store* (general store) in a small village on account of non-availability of internet and other technological facilities, it was very difficult for the assessee to prepare and submit the details before the Assessing Officer. The affidavit and the confirmation depict the true affairs of the family of the assessee. He further contended that in case the evidence already on record are not sufficient for the satisfaction of the Tribunal, the issue may be set aside to the file of the Assessing Officer for fresh adjudication.

5.1. The ld. D/R, on the other hand, contended that the assessee himself did not file the return. The father and brother of the assessee are not maintaining any books of accounts. There is no fund flow statement and it is not discernible, whether both of them are filing income tax returns or not. Therefore, on the strength of these materials and in view of the findigs, the additions should not be deleted.

6. We have heard rival contentions and gone through the record carefully. There is no dispute with regard to the fact that credit entry of Rs.12,70,100/- appeared in the savings bank account of the assessee with Axis Bank, Kuari Bujurg, Vaishali Branch. The dispute is, whether the assessee has explained the source of such deposit with the help of reliable piece of evidence. A perusal of Section 69A of the Act would indicate that it contemplates, where in the financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such article is not recorded in the books of account, if any, for any source of income and the assessee offers no explanation about the nature and source of acquisition then, the value of such money, bullion, jewellery may be deemed to be the income of the assessee for such financial year.

7. It is pertinent to observe that the assessee belongs to a non-organized sector of the society. The ld. Sr. D/R is expecting the maintenance of accounts and other details in a meticulous manner as are being maintained by the big business houses, but here it has to be appreciated that the assessee is running a small shop in a rural area. He has explained the source as contribution from his father and brother towards the marriage of his daughter as well as for purchase of some items for the shop. A sum of Rs.6,01,600/- was deposited in the bank account of the assessee on 21/12/2016 and a RTGS was issued on 22/12/2016. It was transferred in the account of M/s. Triven Tracom Pvt. Ltd. According to the assessee, it was given for the purpose of purchasing sugar for trading. If we appreciate the explanation of the assessee by looking at his bank account, then, we find force in his submissions. In day to day behavior, nobody kept the details in a meticulous manner, more particularly the section of the society which is struggling for survival. We could have appreciated the case of the revenue authorities if they were able to lay their hands on other assets of the assessee in shape of house property, land etc. or on details of any unexplained expenditure. As far as the quantum in question is concerned, to this extent, there can be a saving from the father and brother who would have contributed to the assessee towards the marriage of his daughter. The might have saved this money for that purpose and because of demonetization, it was deposited in the bank account. Similarly, the assessee has demonstrated that a sum of Rs.6,10,600/- out of the total deposit was used for the purpose of his business. Though there is no specific evidence but the circumstances of the assessee and his lifestyle do suggest that the expression "may" used in Section 69A of the Act, has to be used here. This expression "may" infused discretion in the Assessing Officer to treat such an investment as explained or unexplained investment. But looking at the facts of the present

case and the background of the assessee we are of the view that this deposit be not treated as unexplained investment. Accordingly we delete this addition.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 24th May, 2022 at Kolkata.

Sd/-	Sd/-
(RAJESH KUMAR) **ACCOUNTANT MEMBER**	**(RAJPAL YADAV)** **VICE-PRESIDENT**

Kolkata, Dated 24/05/2022
*SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त)अपील (/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण,Patna/DR,ITAT, Patna
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Sr. Pr. Secretary/DDO
आयकर अपीलीय अधिकरण
ITAT, Patna