

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.67/Asr/2023
Assessment Year: 2017-18**

Samreen Shafi Chattabal Channa Mohalla, Near RTO Office, Sringar (J & K). [PAN:EAHPS5244B] (Appellant)	Vs.	ITO, Ward-1, Srinagar. (Respondent)
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Appellant by	None
Respondent by	Sh. Radhey Shyam Jaiswal, Sr. DR

Date of Hearing	15.05.2023
Date of Pronouncement	18.05.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi,[in brevity the ‘CIT (A)’] order passed u/s 250of the Income Tax Act 1961[in brevity the ‘Act’], for A.Y.

2017-18. The Income Tax Officer, Ward-3, Srinagar [in brevity the 'AO'], order passed u/s 144 of the Act.

2. The assessee has taken the following grounds:

“1. The assessment order is bad in law, as AO did not [considered the assessee's submissions and other material and information on record.

2. The Ld. CIT (A) has clearly erred in confirming, that assessee has not filed the ITR return, when she has duly [filed ITR under PAN-AHCPS0377H

3. The Ld. CIT(A) has erred in confirming the addition of Rs. 1,90,15,570/- under section 69A, when the said Transactions are duly accounted in the books or accounts and declared in the ITR filed under PAN- AHCPS0377H

4. The Ld. CIT(A) was not justified in confirming the income of the assessee at Rs. 97,62,133/- by applying profit rate of 8% on her balance Bank credits under section 44AD, when the said transactions were duly recorded in books of accounts and income earned from these transactions stands declared voluntary in the ITR filed under PAN-AHCPS0377H

5. The assessment is based on mere presumptions and conjectures.

6. Assessee craves right to add, alter or modify any grounds) [of appeal before or at the time of hearing of the appeal.”

3. Brief fact of the case is that the assessee is possessing two Permanent Account Numbers (in short PAN) bearing number AHCPS0377H (herein after called ‘old PAN’) and bearing number EAHPS5244B (herein after called ‘new PAN’). The assessee filed the return in the old PAN, AHCPS0377H for the impugned assessment year. In the HDFC Bank the assessee submitted the new PAN, number EAHPS5244AB. Accordingly, the Id. AO got the information and completed the assessment on basis of the new PAN, u/s 144 and the addition was determined on 8% net profit u/s 44AD related to deposit Rs.12,20,26,670/- which works out to Rs.97,62,133/- and amount of Rs.1,90,15,570/- deposited cash in bank account during the demonetisation. Accordingly, the addition was confirmed amount to Rs.97,62,133/- and Rs.1,90,15,570/- which works out the total amount of Rs.2,87,77,703/- U/s 69 of the Act. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved on the appeal order the assessee filed an appeal before us.

4. The Id. AR filed a written submission which is kept in the record. The Id. AR argued that the assessee is a regular taxpayer engaged in the business of running petrol pump in the name & style of M/s Safa Filling Station and filed the return u/s 139 against the old PAN. After marriage the assessee submitted requisite form and allotted another new PAN No. EAHPS5244AB. The assessee used the new PAN in HDFC Bank against the bank account. The return u/s 139 with tax audit report u/s 44AB and balance sheet was submitted with a total income of Rs.13,60,040/- in the old PAN. The issue was agitated before the AO and the Id. CIT(A). But without considering the same, the order was passed and treated the assessee as a non-filer of ITR by considering new pan. The Id. AR invited our attention in the appeal order page 4 to 6 which is reproduced as below:

“The Ld. ITO has made the above assessment on the assumption that the appellant has not filed the return and hence treated the bank deposits during demonetization period & outside demonetization period as income of the assessee vide details above.

In light of the above, following are the brief salient features & crux of my arguments on facts as well as on merits of the case made before your honor in respect of the above appeal:

FACTS OF THE CASE

a) That in response to notice u/s 142(1) dated 10-12-2019 issued by the Ld. ITO. the appellant assessee informed him vide her letter dated 17-12-2019 that she runs a petrol pump at Alamgari Bazar, Srinagar and has filed her return under PAN AHCPS0377H.

b) That along with the above letter, she submitted all details/documents required by the Ld. ITO regarding cash deposited during demonetization period spanning from 8th Nov. 2016 to 31st December 2016. The full text of the letter is reproduced below

REF. NO..GM/17-18/01 DATED:17/12/2019

To,

The Ld. Income Tax Officer ward 3(3),

Raj Bagh, Srinagar.

Dear Sir,

ASSESSEE : Samreen Shafi Prop: M/s Safa Filling Station, Alamgari Bazar, Sgr

ASSTT. YEAR : 2017-18

PAN : EAHPS5244B (NEW PAN.AHCPS0377H)

SUBJECT '.Furnishing of Information u/s 142()of IT Act

Please refer to your Notice dated 10-12-2019 requesting for information in respect of above assessee for the Assessment year 2017-18. The necessary replies are:

1. The assessee runs a petrol pump at Alamgari Bazar, Srinagar and maintains a bank account for her business with HDFC Bank, Alamgari Bazar, Sgr- under Current A/cNo. 50200019025571.

2. The assessee Files her return under PAN AFiCPS0377Fi (PAN copy enclosed). For Asstt. Year 2017-18, she has duly filed her return under Ack. No 170402951120817 dated 12-08-2017. A copy of the return along with audited financial statement is enclosed for your ready reference.

3. The assessee accepts having deposited Rs.1,92,19,870/- (as against Rs. 1,90,15,570/- communicated by your Ld. Self) during demonetization period in HDFC bank account. Out of the total deposits of Rs. 1,92,19,870/- as stated above, SBN notes were Rs. 79,68,500/- as per details below:

$1000 \times 3690 = 36,96,000/-$

$500 \times 8545 = 42,72,500/-$

Total 79,68,500/-

The date wise details of deposits is enclosed.

4. Since the assessee runs a petrol pump, She was allowed to accept demonetized notes uptill 31st December 2016.

5. A certificate from HDFC Bank is also enclosed in this regard. Bank Statement is also enclosed.

Thanking You,

Your Faithfully

For BISMAJ & CO Chartered Accountants

Sd/-

(A. M. Zargar)

Counsel for assessee

c) It is respectfully submitted that the appellant has been allotted two PANs as below (photocopies of PANs enclosed as Annexure "A1 & A2")

EAHPS5244B

AHCPS0377H

While the assessee regularly files her return under PAN AHCPS0377H (returns of last three years enclosed as Annexure "B1, B2 & B3"),

Inadvertently her PAN recorded in the banks is EAHPS5244B. It is for this reason that the appellant assessee has filed two appeals, out of which one may be treated as protective appeal.

d) When the Ld. ITO obtained/received information of bank deposits during demonetization period, he obviously got it under PAN EAHPS5244B. Since no record of IT returns exist under this PAN, he issued a notice to appellant assessee under the impression that she doesn't file a return at all. This falseimpression remained with him till the framing of assessment Order.

e) In the assessment order, the Ld. ITO states that notices were issued to assessee on 25-11-2017, 01-05-2019, 27-09-2019 & 10-12-2019. The assessee states that except notice dated 10-12-2019, she has not received any notice most probably the Ld. ITO mentioning a wrong address. This is, however dealt with lastly in these arguments.

f) When the appellant assessee furnished her reply in response to letter dated 10-12-2019 along with all details, it skipped his attention probably due to heavy rush of work.”

5. The ld. DR vehemently argued and relied on the order of the revenue authorities.

6. We heard the rival submission and relied on the documents available in the record. It is fact that the assessee was allotted two PANs. But the assessee cannot be set as a non-filer or undeclared of tax in the return. The assessee is regularly filing the return and declared the income in old PAN. The issue was agitated before the ld. AO. The ld. AO had not taken any such cognizance about the submission of the assessee in the assessment order. The same issue was also placed before the ld. CIT(A). But without considering the submission of assessee the addition was confirmed. In fact, that the assessee had made a wrong allotment of two PANs. But assessee never concealed his income or turnover before the revenue authorities.

We find that the issue should be further adjudicated by the revenue authorities. Accordingly, we set aside the appeal order & remit back the matter to Id. AO for further adjudication *de novo* considering the issue indicated above.

7. In the result, the appeal of the assessee bearing **ITA No. 67/Asr/2023** is allowed for statistical purposes.

Order pronounced in the open court on 18.05.2023

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order