

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.19/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)



Hasmukh Kanjibhai Tadhani, 170, Vaikunth Dham Society, Laxmikant Ashram Road, Katargam, Surat – 395004.	Vs.	The ITO, Ward – 3(3)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFPT1257K		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	23/08/2023
Date of Pronouncement	04/09/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 24.11.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 24.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the addition of Rs.5,07,000/- on account of cash deposits in the bank account during the demonetization period treated as alleged unexplained money u/s.69A of the Act.

2. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in initiating Penalty u/s.271 A AC of the Income Tax Act, 1961.

3. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

3. Briefly stated, the facts of the case are that the assessee has filed his return of income for assessment year (A.Y.) 2017-18, on 05.03.2018, declaring total income of Rs.6,77,840/-. The return of income was processed u/s 143(1) of the Income Tax Act. Later on, the case of the assessee was selected for scrutiny, under manual scrutiny criteria as per Para-1(vi) of Instructing No. 4/2018 dated 20.08.2018 of CBDT read with subsequent directions issued vide F.NO.225/282/2018/ITA.II dated 19.9.2018. Therefore, notice u/s 143(2) of the Act was issued by the assessing officer, on 29.09.2018 and duly served upon the assessee.

4. As per the information available with the assessing officer, the assessee has maintained bank Account No.2700101110007725 with Bank of India and deposited total cash of Rs.5,07,000/- in this bank account during the demonetization period. Therefore, assessing officer issued notice to the assessee, u/s 142(1) of the Act, on 14.08.2019 and 21.09.2019, calling for certain details as per Annexure to the said notice.

5. In response to the above said notice, the assessee filed a written submission. As regards the source of cash deposited in bank accounts during the demonetization period, the assessee has stated that he had cash on hand, as well as withdrawn during the year, out of which cash

currency of old 500 and 1000 were deposited in bank. To substantiate its claim the assessee filed cash flow statement also before the assessing officer.

6. Another show cause notice was subsequently issued by assessing officer on 17.12.2019, wherein the assessee was requested to submit details of cash deposit made during demonetization period with source thereof. In response to the said notice, the assessee filed a written submission and explained the cash deposited during the demonetization period, amounting to Rs.5,07,000/-. The assessee stated that he has deposited cash of Rs. 5,07,000/- on 1.12.2016 and the source of the same was, cash from cash withdrawal from bank of Rs.2,67,000/- and capital withdrawal from Shivam Polishing LLP in cash of Rs. 2,40,000/-.

7. However, assessing officer rejected the contention of the assessee and held that the deposits of Rs.5,07,000/- in its bank account, during the demonization period is the undisclosed income for the year under consideration, as the assessee has failed to prove the source of the cash deposited of Rs.5,07,000/- in the bank account. Therefore, the cash deposited of Rs.5,07,000/- in the assessee's bank account, during the demonetization period was treated as unexplained money u/s 69A of the Act and accordingly the same was added to the total income of the assessee.

8. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the addition made by the Assessing Officer, observing as follows:

“7.1 The facts and grounds of the appeal have been carefully considered.

7.2 Through the appellant claims that the assessing officer was not justified in making such assessment, he never put forth any reasons for claiming so. Even during current appellant proceedings, the appellant never came forward with his explanation to the grounds mentioned by the appellant despite being offered number of opportunities through hearing notices issued by this office. The onus lies on the appellant to prove his case before seeking relief in the appellate proceedings. On this front, appellant miserably failed. In these circumstances, it is deemed fit not to interfere with the assessment made by the assessing officer. Accordingly, the addition made by the assessing officer is upheld and grounds are disallowed.”

9. Aggrieved by the order of Id. CIT(A), the assessee is in further appeal before us.

10. Shri P. M. Jagasheth, the Learned Counsel for the assessee submitted that in response to notice under section 131 of the Act, the assessee has explained the source of cash deposit to the tune of Rs. Rs.5,07,000/-, during the demonetization period. The assessee stated that he has deposited the cash, out of earlier savings of Rs.1,89,500/- and cash withdrawal from the Bank of India of Rs.3,17,500/-. However, during the assessment proceedings, the assessee has also explained that assessee was having sufficient opening balance and out of that assessee has deposited the cash during the demonetization period. The Ld. Counsel also stated that assessee submitted the cash follow statement for financial years 2015-16 and 2016-17, which is placed at page no.16 of the paper book and stated that since the assessee was having sufficient opening cash balance to deposit during the demonetization period, the addition should not have been made by the assessing officer. The Id Counsel also stated that the basic exemption limit is Rs. 2,50,000/-, that is, the maximum amount which is not chargeable to tax. Therefore out of cash deposit to the tune of Rs.5,07,000/-, the amount of Rs. 2,50,000/-, has deemed to be explained. For this, Id Counsel relied on the judgment of the Co-

ordinate Bench of ITAT, Surat in the case of Jitesh Vithalbhai Rashiya vs. ITO, in ITA No.116/SRT/2021 for AY.2017-18, order dated 18.10.2022. The assessee also submitted the cash book for financial year 2016-17, which is placed at page no.12 to 15 of the paper book and Id Counsel stated that considering the balance in the cash book, it is evidently clear that assessee has sufficient cash balance before the demonetization period starts, therefore, the addition should not have been made in the hands of the assessee and therefore Id Counsel prays the Bench that addition made by assessing officer may be deleted.

11. On the other hand, Ld. Departmental Representative (Id. DR) for the Revenue submitted that assessee has not explained the source of cash deposit during the demonetization period with help of concrete evidences. The assessee submitted before the Assessing Officer the cash book, cash flow statement, bank statement, and amount withdrawn from bank and amount withdrawn from partnership firm, in cash, which are not the sufficient evidences and documents, hence Id DR prays the Bench that addition made by the assessing officer may be sustained.

12. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. Before me, Ld. DR for the Revenue reiterated the stand taken by the Assessing Officer. However, on the other hand, Ld. Counsel for the assessee submitted, the return of income and computation of income for assessment year (AY.) 2017-18 (vide paper book page nos.3 to 5), wherein I have noticed that

assessee has income from house property and also has income from business and profession to the tune of Rs.10,70,000/-, as a remuneration received from Shivam Polishing LLP. The assessee also received profit from Shivam Polishing LLP to the tune of Rs.12,73,620/-. The assessee also submitted the detail of cash deposited during the year under consideration of Rs.5,07,000/-, vide paper book page no.6, wherein it is stated that cash was deposited out of cash withdrawal from bank and out of capital withdrawal from Shivam Polishing LLP in cash. The Ld. Counsel also submitted the bank statement of the assessee, which is placed at paper book, page no.7, wherein the deposit in the bank and withdrawal from the bank, are clearly stated. The assessee also submitted the copy of the cash book from period of 01.04.2016 to 31.03.2017, wherein all the transactions relating to the cash withdrawal from the bank and deposited in the bank, have been duly recorded. The Ld. Counsel also submitted before me the cash flow statement, which is placed at paper book page no.16, and I have observed that, as per cash flow statement, the closing cash balance is Rs.10,40,779/- as on 31.03.2016. The assessee also submitted the details of cash deposited for the period under consideration which is placed at paper book page nos.18 and 19. The assessee also submitted the return of income and ledger account of Shivam Polishing LLP wherein the assessee is a partner.

13. From the above facts, it is vivid that assessee has sufficient cash in hand, at the beginning of 01.04.2016, and the documents and evidences submitted by assessee, prove the cash in hand, as on 01.04.2016, which has not been rebutted and discredited by the Assessing Officer. The assessee has submitted plethora of documents

to prove its claim of cash deposit, such as, the return of income and computation of income for assessment year (AY.) 2017-18, the detail of cash deposited during the year under consideration of Rs.5,07,000/-, the details of cash withdrawal from bank and cash withdrawal from Shivam Polishing LLP, bank statement, the copy of the cash book from period of 01.04.2016 to 31.03.2017, and the cash flow statement. I observe that assessing officer has not stated in anyplace in the assessment order that the above documents and evidences are bogus and fabricated by the assessee. Therefore, I note that assessing officer has not refuted or discredited these evidences and documents. The assessing officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidences in support of its claim, they cannot be brushed aside based on surmises and guesswork.

14. I note that assessee has submitted cash book, cash flow statement and cash book, which shows that assessee has sufficient opening cash balance at the beginning of 01.04.2016. Apart from this, the assessee is a partner in M/s Shivam Polishing LLP and from the partnership firm, the assessee has received remuneration to the tune of Rs.10,70,000/- and profit to the tune of Rs.12,73,620/-. The assessee has submitted the cash deposited during the demonetization and the summary thereof which is placed at paper book page nos.18 to 19 and hence it is quite clear from the cash book, cash flow statement and cash withdrawal from the bank, that assessee has explained the source of cash deposit in bank account in a satisfactorily manner. Hence, I am not inclined to accept the contention of the Assessing Officer in

any manner and hence the addition so made is deleted. Hence this ground of the assessee is allowed.

15. Ground No.2 raised by the assessee relates to initiation of penalty under section 271AAC of the Act, which is premature in nature, hence does not require adjudication.

16. In the result, the appeal filed by the assessee is allowed.

Order is pronounced on 04/09/2023 in the open court.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 04/09/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat