

**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM  
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष  
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.37/Viz/2021  
(निर्धारण वर्ष/Assessment Year:2017-18)**

**Dy.Commissioner of Income Tax  
Circle-3(1)  
Visakhapatnam**

**Vs. Sri Sriram Manchukonda  
#7-6-8/1, MG Road  
Vizianagaram  
[PAN : AHIPM8862F]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

**Cross Objection No.34/Viz/2021  
(Arising out of I.T.A.No.37/Viz/2021)  
(निर्धारणवर्ष/Assessment Year: 2017-18)**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

**Sri Sriram Manchukonda  
#7-6-8/1, MG Road  
Vizianagaram  
[PAN : AHIPM8862F]**

**Vs. Dy.Commissioner of Income Tax  
Circle-3(1)  
Visakhapatnam**

**राजस्व की ओरसे /Revenue by  
निर्धारिती की ओरसे / Assessee by**

**: Shri B.Satyanarayana Raju, DR  
: Shri G.V.N.Hari, AR**

**सुनवाई की तारीख / Date of Hearing**

**: 18.08.2021**

**घोषणा की तारीख/Date of Pronouncement**

**: 08.09.2021**

## **आदेश / ORDER**

### **Per Bench:**

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals)-1, Visakhapatnam in ITA No.10350/2019-20/CIT(A)-1/Vsp/2020-21 dated 15.09.2020 for the Assessment Year (A.Y.) 2-017-18 and cross objections are filed by the assessee.

2. Brief facts of the case are that the assessee is an individual, engaged in the business of retail trading of gold jewellery and silver articles filed his return of income for the A.Y.2017-18 on 03.11.2017, admitting total income of Rs.7,58,330/-. Subsequently the assessee filed revised return of income on 15.12.2017 declaring total income of Rs.32,77,880/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer (AO) found that the assessee made cash deposits in his bank account during demonetization period in the F.Y.2016-17 to the extent of Rs.1,33,90,000/-. The AO called for the explanation and the AO verified with the assessee regarding the source of cash deposits and it was explained that the source was sale proceeds of business transactions as the assessee is in retail trade of gold jewellery and silver articles. The assessee further submitted before the AO that the cash deposits were duly reflected

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in the books of accounts. The AO suspected the source of cash deposit and further called for the explanation with regard to specific bank notes (SBN) made during the demonetization period. The assessee explained that a sum of Rs.59,00,000/- was withdrawn from the bank account on various dates from 01.11.2016 to 07.11.2016 for utilization of the same in construction of new show room in Vizianagaram. Due to demonetization, the cash withdrawn from the bank account could not be utilized and the same was deposited in the bank account. The assessee further explained that the balance amount of Rs.74,90,000/- represent the cash sales, thus the cash deposits during the demonetization period aggregated to Rs.1,33,90,000/-. The AO accepted the explanation of the assessee with regard to Rs.59,00,000/- which was withdrawn from 01.11.2016 to 07.11.2016 as mentioned in page No.3 of the assessment order. However, the AO did not accept the remaining cash deposits made during the demonetization period due to the reason that the deposits were made from 09.11.2016 till the end of December 2016 and there was decrease in net profit from 4.46% to 1.88% compared to sales of the earlier year. Therefore, the AO treated the sum of Rs.74,90,000/- as unexplained money u/s 69A of the Act and accordingly brought to tax u/s 69A r.w.s. 115BBE of the Act and also initiated penalty proceedings u/s 271AAC of the Act.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) after having gone through the submissions, viewed that the cash balance in books of accounts has no relevance with earlier year sales and it needs to be considered with the current year's sales and purchases. With regard to second objection of making deposits till the fag end of the Dec. 2016, the Ld.CIT(A) observed that the deposits were made from 10.11.2016 to 17.11.2016 and the reasons explained by the assessee for staggered deposits was non acceptance of large sums of cash on single day due to long queues in the bank during post demonetization and the same appeared satisfactory. Further, the Ld.CIT(A) found that the assessee has maintained the regular books of accounts and has accounted the cash sales in the books of accounts and the books of accounts shows the cash balance equal to the amount deposited in the bank. Hence, the Ld.CIT(A) held that once the bank account is duly recorded in the books of accounts and the source of cash deposit was explained, the question of making the addition u/s 69A does not arise. The Ld.CIT(A) relied on the decision of coordinate bench of ITAT Mumbai in the case of Karthik Constructions in ITA No.2292/Mum/2016 dated 23.02.2018 and held that the addition made by the AO is not sustainable, accordingly deleted the addition and allowed the appeal of the assessee.

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4. Against which the revenue has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR supported the order of the AO and submitted that the Ld.CIT(A) erred in deleting the addition made u/s 69A r.w.s. 115BBE of the Act.

5. Per contra, the Ld.AR relied on the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material placed on record. In the instant case, the AO made the addition u/s 69A of the Act. The assessee made deposits of Rs.1,33,90,000/- which was duly accounted in the books of accounts. Out of the total sum of Rs.1,33,90,000/-, the AO had accepted the sum of Rs.59,00,000/- which were withdrawn from 01.11.2016 to 07.11.2016 on various dates and dropped the addition to the extent of Rs.59,00,000/-. The AO made the addition relating to remaining amount of Rs.74,90,000/- for the reason that the net profit of the assessee was reduced from 4.46% to 1.88% compared to the earlier year and the cash balance shown by the assessee as on 09.11.2016 does not commensurate with the closing balance as on the same date of last year. Both the factors considered by the AO for making the addition was not relevant as rightly observed by the Ld.CIT(A). What is to be seen is whether the sum was duly recorded in the books of accounts or not. In the instant case, the assessee explained that the entire sum representing the

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deposits was duly accounted in the books of accounts and the books of accounts were produced before the AO, but no defect was found by the AO. Thus, the source of the deposit of Rs.74,90,000/- duly explained by the assessee as sales and accounted in the books of accounts. The AO made the addition u/s 69A. As per section 69A, it is deemed to be income of the assessee as unexplained money when the AO found money, bullion, jewellery or other valuable article and the assessee offers no explanation to the satisfaction of the AO. In the instant case, the source of cash deposited by the assessee in the bank account was duly explained by the assessee and the same was duly accounted in the books of accounts. Thus, there is no case for making addition u/s 69A of the Act. The Ld.CIT(A) relied on the decision of coordinate bench of ITAT in the case of Karthik Constructions, wherein, the coordinate bench held as under :

*"6. We have heard rival submissions and perused material on record. We have also applied our mind to the decision relied upon by the learned Departmental Representative. As could be seen, the Assessing Officer raised suspicion on the loan repayment by doubting the genuineness of the unsecured loan availed by the assessee against which such loan repayment was made. However, as per the facts on record, unsecured loans which were repaid by the assessee during the year were availed in financial years 2000-01, 2001-02 and 2002-03. In fact, the Assessing Officer himself has accepted that the unsecured loans which were repaid during the year were availed before 1st April 2005. It is also admitted factual position that in the earlier years wherein such unsecured loans were availed by the assessee no doubts were raised by the Assessing Officer and the unsecured loans have been accepted. Further, to verify the genuineness of the unsecured loans taken from a large number of persons the Assessing Officer issued notices under section 133(6) on random basis to 15 creditors and summons under section 131 of the Act to five creditors. The Assessing Officer has himself observed in the assessment order that in response to the notices issued under section 133(6) the concerned parties submitted their replies before the Department. Out of five persons to whom summons were*

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*issued two persons actually appeared before the Assessing Officer and were examined. The Assessing Officer accepted the unsecured loan taken from one such person to be genuine while holding the loans taken from other persons to be non-genuine doubting the creditworthiness of the concerned parties on the basis of income declared by them in the impugned assessment year. Thus, as could be seen from the facts on record, the existence of the creditors have been established. Moreover, when the unsecured loans were not taken in the impugned assessment year but were taken in earlier assessment years wherein the genuineness of such loans were never questioned, it cannot be questioned in the impugned assessment year. Therefore, the only thing which requires to be examined in the present appeal is whether the addition made under section 69A of the Act can be sustained. A reading of section 69A of the Act makes it clear, addition can only be made when the assessee is found to be in possession of money bullion jewellery, etc., not recorded in his books of account. It is not the case of the Department that the loan repayment made during the year was either not recorded in the books of account or the source of fund utilised in repaying the loan is doubtful. That being the case, the addition under section 69A of the Act cannot be made. Therefore, the decision of the learned Commissioner (Appeals) has to be sustained. So far as the decision cited before us by the learned Departmental Representative, on careful reading of the same, it is found to be factually distinguishable as in the facts of that case, a large amount of money were found deposited in various bank accounts held by the assessee and the assessee was unable to explain the source of such deposits. Whereas, in the facts of the present case, there is no doubt with regard to recording of repayment of loan in the books of account and the source of such fund. What the Assessing Officer has doubted to disallow the repayment is the genuineness of unsecured loans received by the assessee in the earlier assessment years. In the aforesaid view of the matter, the decision cited by the learned Departmental Representative will be of no help to the Revenue. Accordingly, we uphold the order of the learned Commissioner (Appeals) by dismissing the ground raised.”*

7. In the instant case there is no doubt that the assessee has recorded the sales in the books of accounts and the deposits were made out of the cash balances available in the cash book. The assessee produced the books of accounts and no defects were found by the AO. Therefore the case of Karthik constructions squarely applies to the case of the assessee and hence, respectfully following the view taken by the coordinate bench of ITAT, we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue is dismissed.

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8. The assessee filed cross objections supporting the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, the cross objections filed by the assessee becomes infructuous, hence dismissed.

9. In the result, appeal of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 8<sup>th</sup> September, 2021.

<p>Sd/-  <b>(एन के चौधरी)</b>  <b>(N.K.CHOUDHRY)</b>  <b>न्यायिकसदस्य/ JUDICIAL MEMBER</b>  Dated : 08.09.2021  L.Rama, SPS</p>	<p>Sd/-  <b>(डि.एस.सुन्दरसिंह)</b>  <b>(D.S.SUNDER SINGH)</b>  <b>लेखासदस्य/ACCOUNTANT MEMBER</b></p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue -Dy.Commissioner of Income Tax, Circle-3(1), Visakhapatnam
2. निर्धारिती/ TheAssessee -Sri Sriram Manchukonda, #7-6-8/1, MG Road Vizianagaram
3. The Pr.Commissioner of Income Tax-1,Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-1, Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam