

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before
Shri A. Mohan Alankamony, Accountant Member
AND
Shri S.S. Godara, Judicial Member

ITA No.1055/Hyd/2019		
Assessment Year: 2017-18		
Sri Arvind Diwani, Flat No.610, 6 th Floor, Babukhan Estate, Basheerbagh, Hyderabad – 500 001. PAN : AMBPD8617K.	Vs.	The Income Tax Officer, Ward – 9(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri A.V. Raghuram	
Revenue by:	Shri T. Sunil Gowtham	
Date of hearing:	25/11/2021	
Date of pronouncement:	29/11/2021	

ORDER

Per S. S. Godara, J.M.

This assessee’s appeal for A.Y 2017-18 arises from the Commissioner of Income Tax (Appeals)-7, Hyderabad’s order dated 26.04.2019, in case No.0127/CIT(A)-7/2018-19 involving proceedings under section 143(3) of Income Tax Act, 1961 (in short, “the Act”).

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal challenges correctness of both the lower authorities action treating his cash seized amounting to Rs.11 lacs as unexplained in the course of assessment framed on 18.12.2018 as upheld in CIT(A)'s lower appellate discussion reading as under :

"4.1 I have considered the findings of the Assessing Officer in the assessment order and the submissions of the appellant carefully. The facts of the case are that a cash of Rs.11,00,000/- was seized on 10-11-2016 by Police from the possession of the assessee at Vijayawada, A.P. The date of seizure of the cash falls in the bank note demonetization period. The appellant tried to explain the source of cash seized by the police, as cash on hand. The Assessing Officer did not accept the claim of the appellant with regard to the source of cash seized out of cash on hand on the ground that the closing cash balance as on 1-4-2016 at Rs.8,45,252/- and subsequent cash balance as on 10-11-2016 at Rs.13,17,750/- shown in the cash book are fictitious and concocted in order to explain the unaccounted cash seized by the Police during the demonetization period. The Assessing Officer did not accept the explanation given by the appellant about the source of the cash. The explanation given by the appellant that the cash was in his possession on account of change in the business was not acceptable to the Assessing Officer. The submission given by the appellant that there was a change in the business was not supported by any evidence. There was no plausible reason for maintenance of huge cash balance as stated by the appellant. I find that the cash book maintained by the appellant showing huge cash balance from 1-4-2016 to 10-11-2016 is fictitious and concocted. The explanations given by the appellant for need to maintain huge cash balance are not supported by any documentary evidence and hence not convincing. Hence, I confirm the addition made by the Assessing Officer."

3. We have heard rival contentions and find no merit in the Revenue's stand supporting the impugned addition. This is for the reason that the assessee has placed on record his cash book for the period from 01.04.2016 to 31.03.2017 indicating his opening balance of Rs.8,45,252/-, closing balance of Rs.13,43,950/- on 08.11.2016; respectively. There is hardly any

dispute that the impugned cash of Rs.11 lacs had been seized on 10.11.2016. Coupled with this, it emerges that the very Assessing Officer had accepted the foregoing closing balance of Rs.8.45 lacs in section 143(3) of the assessment framed as per the assessee's revised return.

4. Learned D.R. has strongly sought to buttress an impugned addition in light of CIT(A)'s detailed discussion. We find no merit therein since the assessee has sufficiently proved not only to have been engaged in regular business activity in the name of propriety concern but also the corresponding opening and closing balances on 01.04.2016 and 08.11.2016; as the case may be, in foregoing terms which have nowhere been rejected. We thus hold that the lower authorities have erred in law and on facts in making the impugned addition in assessee's hands. The same is directed to be deleted.

5. This assessee's appeal is allowed.

Order pronounced in the Open Court on 29th November, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 29th November, 2021.

TYNM/sps

Copy to:

S.No	Addresses
1	Sri Arvind Diwani, Flat No.610, 6 th Floor, Babukhan Estate, Basheerbagh, Hyderabad – 500 001.
2	The Income Tax Officer, Ward-9(3), Hyderabad.
3	CIT (A) – 7, Hyderabad.
4	Pr. CIT – 7, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order