

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1453/DEL/2021
[Assessment Year: 2017-18]

Tilak Raj Anand, F-40, South City-I, Gurgaon.	<u>Vs</u>	Income-tax Officer, Ward 4(4), Gurgaon.
PAN- AFJPA9555N		
APPELLANT		RESPONDENT
Appellant by		Sh. Sandeep Kumar, FCA
Respondent by		Sh. Anil Kumar Sharma, Sr. DR
Date of hearing		16.02.2022
Date of pronouncement		17.03.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals), national Faceless Appeal Centre (NFAC), Delhi, dated 18.08.2021, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

- “1. The Assessment order passed by Assessing Officer is bad in law, is against facts and circumstances of the case, is again provisions of the Income Tax Act and against law of natural justice.

2. The Ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre has grossly erred in confirming the addition made by Assessing officer u/s 69A of Rs. 400000/- on the basis of surmises and conjectures, without any evidence, is against facts and circumstances of the case, is against decided cases by hon. Courts, therefore, is against provisions of Income Tax Act, 1961 and is also bad in law.
3. The assessee craves leave to amend, add or modify any grounds of appeal before the disposal of the appeal.”

2. The only effective ground is against the sustaining of addition of Rs. 4,00,000/- made u/s 69A of the Income-tax Act, 1961, hereinafter referred to as the “Act”.

3. Facts, in brief, are that the assessee e-filed his return of income declaring income of Rs. 7,86,040/- on 28.10.2017. The case of the assessee was selected for limited scrutiny under CASS to examine the issue of cash deposit during the year. The Assessing officer, during the course of assessment, issued a notice dated 26.11.2019 u/s 142(1) of the Act to explain the cash deposit during the demonetization period in old currency notes and state the closing balance of cash in hand as on 08.11.2016. In response thereto, the assessee has stated that due to security reasons the cash was deposited in two lots. The contention of the assessee was not found acceptable by the Assessing Authority. He treated the sum of Rs. 4,00,000/- as not available in cash in hand and made addition of the same. Aggrieved against this the assessee preferred appeal before the learned

CIT(Appeals), who, after considering the submissions dismissed the appeal. Aggrieved against this, the assessee is in appeal before this Tribunal.

4. Learned counsel for the assessee reiterated the submissions as made before the authorities below. Learned counsel took us through the cash flow statement, as filed from 01.04.2015 to 31.03.2017, showing opening balance in April 2015 at Rs. 1,51,331/-. Thereafter in April 2016 the closing balance was Rs. 18,67,824/- . Learned counsel submitted that in October, 2016 the closing balance of cash was Rs. 9,77,796/-. Learned counsel submitted that the authorities below have grossly erred in making the addition without verifying the veracity of the contention of the assessee.

5. I have heard rival submissions and perused the material on record. I find that the Assessing Officer issued a show cause to explain the cash deposit of Rs. 9,00,000/- in specified bank notes in the bank account during the demonetization. The contention of the assessee before the authorities below was that all the relevant documents in the nature of ledger, cash book, sales, purchases, cash flow were filed and no objection was raised by the Assessing Authority. It was further contended that the assessee accepted the source of deposit of Rs. 5,00,000/- on 16.11.2016 but treated Rs. 4,00,000/- deposited on 22.11.2016 as unexplained. The basis of the addition is that it is against the normal understanding that the assessee should have deposited the amount in one day. I find that the Assessing officer has

not given any finding regarding the availability of cash with the assessee prior to the demonetization. If an assessee has cash available prior to demonetization and if he opted to deposit the same multiple times, there is no prohibition in law for such deposits. The fundamental question would be whether the assessee was having the explained cash which was deposited in his bank account. The Authorities below have not commented anything adverse on the evidences filed by the assessee regarding availability of cash and correctness of the cash flow statement. No material is brought on record rebutting the contention of the assessee. Therefore, the finding of the authorities below is purely based upon surmises, which is not permissible under law. In my considered view the Assessing Officer ought to have given a clear finding regarding availability of cash in the specified bank notes, which were banned by the order of the Government. It was stated before the authorities below that the demonetization of currency was declared by the Reserve Bank of India on 8.11.2016. After demonetization there was huge crowd to deposit old currency and withdrew new currency by public. As per the assessee it was not safe in view of the banks being over crowded during that period. This plea of the assessee was rejected stating that on earlier occasion the assessee had withdrawn bigger amount of money from the bank account. I find merit into the contention of the assessee that there were big lines and the banks were over crowded. Therefore, it was open to the assessee for the safety of the money to

deposit in piece meals till the period as allowed by the Competent Authority.

Therefore, the basis of making addition, in my view, is unjustified and deserves to

be deleted. The Assessing Officer is hereby directed to delete the addition.

Grounds of appeal taken by the assessee are allowed.

6. In the result, assessee's appeal is allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 17/03/2022.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI