

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.74/Lkw/2021
Assessment year:2017-28

Shri Sunny Kapoor, 8A Model Townj, Bareilly. PAN:ATHPK2625D	Vs.	Income Tax Officer-2(2), Bareilly.
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri Harish Gidwani, D. R.
Date of hearing	10/02/2022
Date of pronouncement	12/04/2022

ORDER

This is an appeal filed by the assessee against the order of learned CIT(A) dated 25/08/2021. In this appeal the assessee has taken the following grounds:

"1. *The learned CIT(A), National Faceless Appeal Centre, has grossly erred in confirming addition of Rs.7,68,000/- made by the learned Assessing Officer being cash deposited during the demonetization period with total disregard to the facts and circumstances of the case.*"

2. Learned counsel for the assessee, at the very outset, invited my attention to a petition dated 09/02/2022 received by the assessee on 10/02/2022 wherein the assessee has taken an additional ground of appeal

which he is stated that this is a legal ground and his coming out of the facts of the case therefore, in view of the judgment of Hon'ble Supreme Court in the case of NTPC, the same may be admitted and adjudicated first. Learned D. R. did not object to the admission of additional ground of appeal. The additional ground of appeal is reproduced below:

"1. Because the authorities below have erred on facts and in law in invoking the provisions of section 69A and 115BBE, which provisions are not applicable in as much as the cash deposited in bank is neither undisclosed nor unexplained, the tax levied as per the said provisions be deleted."

3. I find that the above additional ground is a legal ground and is coming out of the material placed on record therefore, the same was admitted and Icf was asked to proceed with his arguments.

4. Learned counsel for the assessee submitted that the Assessing Officer had made addition on the basis of deposit in the bank account and had invoked the provisions of section 69A and section 115BBE which are not applicable as the provisions of 69A are applicable in the case of unexplained investments outside the books of account whereas the deposits made in the bank account cannot be said to be unexplained and which was also recorded in the books of account of the assessee. In this respect my attention was invited to the definition of unexplained money u/s 69A of the Act. Therefore, it was argued that since the Assessing Officer has made the addition u/s 69A, which is not applicable to the assessee therefore, the assessment order passed may be quashed. Explaining the facts of the case, Learned counsel for the assessee submitted that the assessee had deposited certain amount of money in his bank account and the Assessing Officer had made the addition of Rs.18,42,780/- and learned CIT(A) allowed partial relief to the assessee but confirmed the addition to the extent of

Rs.7,68,000/-. Learned counsel for the assessee submitted that learned CIT(A) has upheld the addition by holding that the old currency, which was discontinued, could not have been accepted by the assessee as part of the sales as the old currency did not remain legal tender after the demonetization on 09/11/2016. Learned counsel for the assessee further submitted that the only reason for sustaining this addition was that the assessee had accepted old currency and had credited the cash book with cash sales. Learned counsel for the assessee submitted that nowhere in his order, learned CIT(A) has denied that the sales were not made. Therefore, it was prayed that the appeal filed by the assessee may be allowed.

5. Learned D. R., on the other hand, submitted that the additional ground taken by the assessee is not sustainable. He submitted that the assessee was not able to explain the deposits and therefore, section 69A was rightly invoked by the Assessing Officer. As regards the cash sales with old currency notes, Learned D. R. submitted that the learned CIT(A) has rightly sustained the addition by holding that after the demonetization, such currency did not constitute legal tender and therefore, appeal filed by the assessee be dismissed.

6. I have heard the rival parties and have gone through the material placed on record. First of all, I would take the additional ground of appeal where Learned counsel for the assessee has taken a ground that section 69A was not applicable as the assessee had duly recorded the transaction in the books of account and section 69A applies only to those unaccounted assets which are not recorded in the books of account. In this respect it is important to first visit the provisions of section 69A, which for the sake of completeness are reproduced below:

"SECTION 69A.

Unexplained money, etc.

[Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of such financial year.]

6.1 The bare reading of above section states that where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the money and the value of the bullion, jewellery or other valuable article will be deemed to be the income of the assessee of such financial year. There is no dispute that the assessee is maintaining books of account and such sales has been recorded in the books of account and from the books of account itself the CIT(A) has observed that the sales recorded by the assessee during the demonetization period was with the illegal currency therefore, section 69A could not have been invoked as section 69A clearly states that such income will be deemed to be income of the assessee where the assessee is found to be owner for a valuable not recorded in the books of account. In view of the above, the

additional ground of the assessee is accepted and the assessment order passed by the Assessing Officer is quashed. In view of my allowing additional ground of appeal, the regular grounds taken by the assessee in this appeal has become infructuous and are therefore, dismissed.

7. In the result, the appeal of the assessee stands partly allowed.

(Order pronounced in the open court on 12/04/2022)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:12/04/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow