

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASHTY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2578/Mum/2021
(A.Y. 2017-18)**

JJC Beach Side B/2, 76, Snehadhara Building, Dadabhai Cross Road, No. 3, Vile Parle – (West) 400056	Vs.	Commissioner of Income Tax(A) NFAC, Delhi- 110001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABAJ4012D		
Appellant	..	Respondent

Appellant by :	Prakash Jhunhun Vala & JD Sanghvi
Respondent by :	S.N. Kabra

Date of Hearing	04.05.2022
Date of Pronouncement	04.05.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order passed by the ld. CIT(A), NFAC, Delhi, which in turn arises from the order passed by the A.O. u/s 144 of the Income Tax Act, 1961, for A.Y. 2017-18. The assessee has assailed the impugned order on the following grounds before us:

- “1.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in passing the appeal order ex-parte without allowing adequate opportunity of being heard;
- 2.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition u/s.69A r.w.s. 115BBE of Cash deposits made, during demonetisation period, in regular bank accounts of Rs.73,18,750/-;
- 3.0 The Ld. CIT(A), before confirming the addition u/s.69A on cash deposits made in bank accounts, ought to have considered the under stated vital facts, being;
- (a) The source of cash deposits is out of monies received from own members of the assessee, being non-profit motive club/association, towards membership fees and other collections;
- (b) The complete identity and creditworthiness of members and genuineness of fees and collections from members are supported with adequate documentary evidences filed on record;
- (c) The fees and collection from members, corresponding to cash deposited in bank accounts, credited to Income and Expenditure A/c had not been disturbed in the assessment order.
- 4.0 Without prejudice, Ld. CIT(A) failed to consider the undisputed fact that appellant's non-profit motive club/association received the disputed sum for incurring the expenses on behalf of contributing members, thereby the addition of entire cash deposits of Rs.73,18,750/- is unjustified.”

2. The fact in brief is that the A.O finalized the assessment u/s 144 of the Act on 24.12.2019 assessing the total income of the assessee at Rs.73,18,750/-. The A.O stated that assessee has deposited cash amount of Rs.27,63,550/- in a/c No. 50232010131065 with Syndicate Bank, Ville Parle, East Branch and Rs.45,55,500/- in a/c No. 21100260360 with Dena Bank, Ville Parle, West Branch in old currency (500 & 1000 rupees notes). The A.O stated that Income Tax Department has generated list of assessee who had deposited substantial cash in bank account during the demonetization period (from 09.12.2016 to 30.12.2016). However, the assessee has not filed income tax return for A.Y. 2017-18 u/s 139 of the Act. The assessee has also not made any compliance to the notice issued u/s 142(1) of the Act and their source of cash deposit remain unexplained. The A.O had issued notice u/s 133(6)

of the Act to Syndicate Bank and also to Dena Banch calling for information regarding the assessee's KYC details with Bank copies of bank statement, cash deposits details etc. The A.O has obtained the detail from the aforesaid banks which was reproduced at page 2 to 3 of the assessment order. In response to the notice issued u/s 142(1) of the Act, authorized representative of the assessee has made submission on 16.07.2019, 19.07.2019 & 26.07.2019 stating that assessee JJC Beach Side is formed by the members for themselves and it works on the concept of mutuality. Members themselves have formed managing committee and collected members fees every years and spend the same on organizing various cultural, educational and religious functions. The assessee also explained that it was having almost 800 members who had contributed subscription in cash or in cheques and same was regularly deposited in the bank account. The AO was not agreed with the submission of the assessee stating that assessee had received the fees during the demonetization period in cash in old currency and same was generated from undisclosed sources. The A.O further stated that assessee had not provided addresses and PAN numbers or the return of income of the members of the committee to establish the identification of the members and genuineness of the transactions. Therefore, the A.O has added the impugned cash deposited during demonetization period as unexplained money u/s 69A of the Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee stating that assessee has failed to make compliance during the course of appellate proceedings.

4. During the course of appellate proceedings before us the ld. Counsel has submitted paper book comprising detail of information and copies of document furnished before the A.O during the course of assessment proceedings. The ld. Counsel submitted that page no. 11 to 63 of the paper book are pertained to personal detail along with name & address etc. of the members from whom the assessee have received the membership fees. The ld. Counsel further submitted that A.O has not considered all these details and documents before making the impugned addition in the total income of the assessee. The ld. Counsel also contended that ld. CIT(A) has incorrectly dismissed the appeal on the reason of non-compliance without considering the adjournment request of the assessee. In this regard the ld. Counsel has referred page No. 1 of the paper book comprising copy of email filed by the assessee before the ld. CIT(A) to adjourn the hearing fixed in the case of the assessee from 21.10.2021 to 5.11.2021 which was not considered by the ld. CIT(A).

On the other hand, the ld. D.R relied on the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, the ld. CIT(A) has dismissed the appeal of the assessee for want of non-prosecution stating that assessee has not made compliance to the hearing fixed on 21.10.2021. Section 250(6) of the I.T. Act contemplates that ld. CIT(A) would determine points in dispute and record reasons of such point in support of his conclusion. However, the ld. CIT(A) has not taken into consideration the relevant supporting material furnished by the assessee during the course of assessment proceedings for deciding on merit the impugned issues contested in this appeal. Apart from this the ld. CIT(A) has also not considered the request for adjournment as evident from copy of email

placed in the paper book as discussed supra in this order. Looking to the above facts and circumstances we consider it appropriate to restore this case to the file of the Id. CIT(A) for adjudicating afresh on merit after taking into consideration the relevant supporting material furnished by the assessee and after affording due opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.05.2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 04.05.2022

PS: Rohit

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai