IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "C-SMC" KOLKATA

Before: Shri Manish Borad, Accountant Member, and
Shri Sonjoy Sarma, Judicial Member

आयकर अपील सं.य/ ITA No. 614/Kol/2021 Assessment Year:2017-18

Swami Shibrupananda Jayrambati Ramkrishna Saradamath & Mission, P.O Jayrambati, Dist. Bankura,Pin-722161.	बनाम V/s.	I.T.O., Ward-3(3), Bankura
PAN: DMXPS9682E		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri D.K.Sen, Advocate,Ld.AR
प्रत्यर्थी की ओर से/By Respondent	Shri B.S. Anand, Ld.Sr.DR
सुनवाई की तारीख/Date of Hearing	28-04-2022
घोषणा की तारीख/Date of Pronouncement	17-06 -2022

आदेश /O R D E R

Per Sonjoy Sarma, JM :

The present appeal has been preferred by the assessee against the order dated 21-09-2021 passed u/s. 250 of the Income-tax Act, 1961 by the of ld. Commissioner of Income-tax (Appeals), [in short, the ld. CIT(A)] National Faceless Appeal Centre (NFAC), Delhi, which in turn arises out of assessment order passed u/s. 144 of the Income-tax Act, 1961 (in short, the 'Act') by ITO, Ward-3(3). Bankura on 18-11-2020 for the A.Y under consideration, whereby a sum of Rs. 20,67,821/- and Rs.13,00,000/- u/s. 69A r.w.s 115BBE of the I.T Act, 1961 .

2. At the time of hearing the registry has informed that the present appeal is time barred by 39 days. The assessee prayed for condonation of the delay by submitting the affidavit which is placed on record. We after perusing the affidavit as well as material available on record we find that merit in the contention of the affidavit given by the assessee and keeping the larger interest of justice, we condone the delay and admit the appeal for adjudication.

3. The assessee has raised the following grounds of appeal:-

> 1. For that the Order of the Ld. CIT (A), NFAC, confirming Order of the Ld. AO is arbitrary, whimsical and illegal.
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> 2. For that the Ld. Appellate Authority, in consideration of the facts and circumstances of the matter is not justified in sustaining addition of Rs.20,67,8211- made by the Ld. AO.
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> 3. For that the Ld. Appellate Authority in consideration of the facts and circumstances of the case, is not justified in confirming Rs. 13,00,000/- added u/s 69A read with Section 115BBE of the IT Act, 1961 by the Ld. AO.
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> 4. For that the Ld. Appellate Authority in consideration of the facts and circumstances of the matter, dismally failed to apply his mind to the issue of legal tender and legality of application of section 115BBE of the IT Act, 1961.
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> 5 For that the appellant reserves his right to add to, to alter, to amend the rounds and to adduce a er and document at the time of hearing.

4. Brief facts of the case are that the Ld. AO issued notice u/s. 142(1) on 15.03.2018 upon the assessee calling the assessee to prepare a true and correct return of income for the AY in question. But the assessee has failed to furnish the return of income for the AY under consideration. As the assessee failed to furnish the return of income in response notice issued u/s.

142(1) of the Act the Ld. AO fixed the date of hearing on 19.07.2019. But this time also the asssee did not submit any compliance except prayed for adjournment. Accordingly, the Ld. AO as per provisions of section 144(1) to gather relevant material and to make assessment of the total income to the best of judgment of Ld.AO proceedings in ITBA has been initiated by issuance of said notice u/s. 142(1) of the Act fixing the date of hearing on 19-07-2019 with questionnaire to explain the source of said deposit with computation of total income, but no compliance has been made by the assessee. Letter u/s. 133(6) dt. 06.05.2019 were issued to the respective branches. In response to which, said authority has sent compliance. The Ld. AO found during the AY in question total cash credit/deposit and credit on transfer along with cash deposit in demonetized note during the period demonetization are as follows:-

Name of the Bank & Branch	Account No.	Amount of total cash deposit & credit on transfer	Out of which deposition in demonetized note of Rs.1000/- during demonetization.	Out of which deposition in demonetized note of Rs.500/- during demonetization
UBI, Joyrambati Branch	1421010100006	25,22,500/-	22.11.16 1000x700	16.11.16 500x400 22.11.16 500x400
PNB,Gopinathpur Branch	1027000100022722	2,00,000/-	28.11.16 1000x20	

Total Rs. 27,22,500

5. The Ld. AO assessed the income of assessee at Rs. 20,67,821/- [Rs. 7,11,250 + Rs. 13,56,571] after making addition of Rs. 7,11,250/- [50% of Rs. 27,22,500 – Rs. 13,00,000/-] as income from profession, Rs. 13,00,000/- cash deposit post demonetization as undisclosed income and undisclosed

bank interest of Rs.56,571/-, totalling to Rs. 20,67,821/- as income from other sources.

6. Aggrieved, the assessee preferred an appeal before the ld. CIT(A), who sustained the both the additions of Rs.20,67,821/-, which included addition of Rs. 13,00,000/- u/s. 69A r.w.s 115BBE of the Act. Aggrieved, now the assessee is in appeal before this tribunal

7. At the outset, the Ld. Counsel for the assessee submits that the Ld. AO has divergent view in respect of bank deposits . The Ld. AO treated cash deposits of Rs. 14,22,500/- as income of assessee as income from profession and estimated 50% of such income from profession. However, deposits of Indian currency in bank after the demonetization amount of Rs. 13,00,000/- is treated as undisclosed income of the assessee. Accordingly, two views cannot be taken in respect of same bank deposits/bank transaction and 50% of such whole deposits made by the assessee in his bank account required to be treated as professional income of assessee.

8. On the other hand, the Ld. Departmental relied on the order of the ld. CIT(A) and lower authority (Ld.AO).

9. We after hearing the rival submissions and material available on record, are of the view that since the Ld. AO had taken two views in respect of same transaction/bank deposits made by the assessee, one pre-demonetization period deposits, which he treated as income from profession of the assessee and 50% of such deposits treated as income from profession. On the other hand, deposits of Rs. 13,00,000/- made post demonetization treated as undisclosed income u/s. 69A r.w.s 115BBE of the Act.

10. Taking into consideration this factual position, we are of the view that this dual action of the ld. AO in making said addition on the same issue is not justified and as such we hold that the total cash deposit in bank account i.e. Rs. 27,22,500/- (which includes the deposits during post demonetization period totalling Rs. 13,00,000/-) to be treated as gross receipts from profession and 50% of such deposits be treated as 'income from profession' during the assessment year in question. Accordingly, ground no. 2 raised by the assessee is partly allowed.

11. As far as Ground No. 3 is concerned, we find that since the cash deposit pre-demonetization has been accepted as Business/Profession receipt by Ld. AO, the remaining deposit of Rs. 13,00,000/- post demonetization should also be treated as Business Income as no adverse finding is given by Ld. AO in this regard except the allegation of cash deposit post demonetization and therefore, provisions of section 69A r.w.s 115BBE of the Act will not apply on the said deposits. Thus, ground no. 3 is allowed. Remaining grounds of appeal are consequential and general in nature, need not require to be examined. As such, appeal of the assessee is partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

The order pronounced in the open Court on 17 -06-2022

Sd/-	Sd/-
(MANISH BORAD)	**(SANJOY SARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

दनांक /Dated : 17-06-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/Assessee: Swami Shibrupananda Jayrambati Ramkrishna Saradamath & Mission, P.O Jayrambati, Dist. Bankura,Pin-722161.

2. प्रत्यर्थी/Respondent/Revenue: The I.T.O., Ward-3(3), Bankura.

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata

6. गार्ड फाइल / Guard file.

/True Copy By order/आदेश से, Assistant Registrar /
Senior Private Secretary
ITAT, Kolkata