

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 674/MUM/2022
Assessment Year: 2017-18**

Girish Vipinchandra Patel,
159/B, Lalita Sadan, S.V.
Road, Bandra (West),
Mumbai-400050.

PAN No. AAFPP 4072 L

Appellant

Income Tax Officer-
35(1)(4),

Vs. Bandra Kurla Complex,
Mumbai-400051.

Respondent

Assessee by : Mr. Girish Vipinchandra Patel, (in
Person)

Revenue by : Mr. R.N. D'Souza, DR

Date of Hearing : 01/11/2022

Date of pronouncement : 22/12/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the order dated 11th February 2022 passed by the Ld. Commissioner of Income Tax (Appeals) – 49, Mumbai [in short, ‘the Ld. CIT(A)’] for A.Y. 2017-18, raising following grounds:

1. On the facts and circumstances of the case, the Ld. Commissioner of Income Tax (A) 49, Mumbai has erred in confirming the addition of Rs 12 Lacs added by the assessing officer by erroneously holding that the assessee has not been able to explain the source of this money and also by ignoring that

assessee had requested, within time that a part of the seized amount should be deposited under the PMGKY scheme.

2. Because the Ld CIT (A) as also the AO has failed to deal with the fact that the PCIT Range35 had confirmed receipt of letter on 30.3.2017 (Written as early as on 10.3.2017) regarding the appellants desire to take benefit of PMGKY scheme and the only reason given was non availability of appraisal report. These, the appellant submit, relate to internal function of the Department and this non deposit ought not to be held detrimental to the case of the Appellant.

3. Because the only reason the appellant did not reiterate the evidence already in possession of the Department (as regards the source of cash) was to put a quietus to the entire matter in terms of the scheme floated by the Government of India. The findings returned by both the AO and the CIT (A) to the effect that the Appellant has not been able to declare the source of cash is completely perverse. In response to notice issued under S. 142(1) of the Act, the appellant had declared the source of cash belonging to one Anil Thakkar and Kunal Kalsaria who had also filed affidavits in support of such statement.

2. Briefly stated the facts of the case are that the Air Intelligence Unit (AIU) of Income-tax Department, Mumbai intercepted Ms. Naveen Goelon arrival at Mumbai Airport, who was carrying cash of Rs.34,00,000/- in demonetized notes of Rs.500 and Rs.1000 while traveling from Delhi to Mumbai on 06.12.2016, and recorded her statement u/s 131 of Income-tax Act, 1961 (in short 'the Act'). In her statement, she admitted that Rs.12,00,000/- out of Rs.34,00,000/- found from her belonged to the assessee. In view of her statement, the assessee was summoned u/s 131 of the Act and his statement was recorded. In the statement he admitted that said

money was given by him to her for legal services. For verification of claim of the assessee, the Income-tax Department carried out survey u/s 133A of the Act at his office. During survey he stated to have been engaged as Consultant in Debt Recovery Tribunal. The Income-tax Department, further carried out a search and seizure action u/s. 132 of the Act at the residential premises of the assessee on 08.12.2016. In the statement recorded u/s. 132(4) of the Act, the assessee admitted that Rs.12,00,000/- was given by him to Ms. Naveen Goel and expressed his inability in providing documentary evidences with regard to the source of old currency notes. He further, agreed to pay tax on Rs.12,00,000/- for the A.Y. 2017-18 relevant to the F.Y. 2016-17. Thereafter, the assessee filed return of income for the year under consideration u/s. 153A of the Act on 28.12.2017 declaring total income at Rs. 7,00,950/-, however, the cash found of Rs. 12,00,000/- and admitted u/s. 132(4) of the Act, was not offered in the return of income filed.

3. The Assessing Officer issued statutory notices under the Act for assessment of income. During assessment proceedings, the assessee pleaded for considering the cash seized of Rs.12,00,000/- under the Pradhan Mantri Garib Kalyan Yojna (PMGKY), scheme , 2016. The Assessing Officer rejected the contention of the assessee

and completed the assessment after making addition of Rs. 12,00,000/- u/s. 69A of the Act.

4. The assessee could not find favour before the ld. CIT(A) also.

5. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before the Income-tax Appellate Tribunal (ITAT) by way of raising grounds as reproduced above.

6. Before us, the assessee appeared in person and filed a Paper Book (pages 1 to 14) containing letters addressed to the lower authorities and affidavits from Shri Anil Bhagwandas Thakkar and Shri Kunal Kasaria in support of source of cash.

7. In the grounds raised, the assessee is aggrieved on two issues. The first issue is that application of the assessee for opting the PMGKY has not been considered and consequent benefit of PMGKY has not been provided to the assessee. The second issue in alternate is that source of the cash of Rs. 12,00,000/- in the hands of the assessee was explained by the assessee before the AO but same was not examined either by the AO or by the Ld. CIT(A). Both these issues have been agitated partly in ground no. 1. The ground no. 2 of the appeal specifically relates to rejection of the prayer of the assessee for the benefit of PMGKY scheme. The ground No.3 relates to explanation of source of cash found.

8. The brief facts qua the first issue in dispute are that since the assessee had not offered the amount of Rs.12,00,000/- in his return of income although admitted in his statement recorded on oath u/s. 132(4) of the Act, during the course of assessment proceedings, he was show caused *vide* notice dated 24.12.2018 as to why the same should not be added to his total income. In response to the same, the assessee vide his letter dated 26.12.2018 stated that he had requested to office of the Pr. Commissioner of Income Tax-35, Mumbai (PCIT) *vide* letter dated 28.04.2017 that he would go ahead with the scheme of PMGKY as was requested to the Deputy Director of Income-tax (Investigation) on 10/03/2017 and explained that he was under the impression that his payment was already made under the said scheme, which was valid till 31/03/2017 (sic).

8.1 But, we find that the Ld. PCIT *vide* his letter dated 31.05.2017 had intimated to the assessee that no cognizance of the assessee's request could be taken because *firstly*, neither appraisal report was received from Investigation Wing of Income-tax Department nor any other intimation was received from DDIT(inv.), *secondly*, the assessee did not file any proof of deposit of 25% undisclosed cash in PMGKY scheme till 31.03.2017 and *thirdly*, as

per Circular-2 of CBDT dated 18.01.2017, deposit under PMGKY cannot be made from the seized amount.

8.2 Accordingly, the Assessing Officer took the view that the assessee was not eligible under the 'PMGKY' scheme as the conditions of deposit of 25% amount under the scheme was not satisfied. Further, according to the Assessing Officer, no explanation about the source of cash found of Rs. 12,00,000/-, was given, so he made the addition of Rs. 12,00,000/- u/s. 69A of the Act to the total income of the assessee.

9. Before the Id. CIT(A), the assessee referred to letter dated 10.03.2017 filed with the Deputy Director of Investigation, Unit 5(3), Mumbai and letter dated 28/04/2017 filed before the Ld. PCIT where he requested for depositing the money under PMGKY Scheme and give consequent benefit. However, the Ld. CIT(A) declined his request observing as under:

“6.1.5 The assessee in his submissions filed before me has put a lot of emphasis that he was willing to offer this amount in Pradhan Mantri Garb Kalyan Yojna(PMGKY) 2016, but due to the circumstances as explained in his submissions, he was not able to avail the benefits of the scheme. The claim of the assessee is that he failed to avail the benefit of the scheme for the reasons which are attributable to PCIT, DDIT (In.) etc. In this regard, I am of the considered view that the assessee could file an appeal in respect of an addition and while deciding the said appeal it is not under my jurisdiction to

verify whether there was any genuine cause or reason which prevented the assessee from availing a scheme of voluntary disclosure of income. The fact of the matter is that it is an undisputed fact that this amount was not offered under PMGKY 2016, and therefore the AO had a valid jurisdiction to make the assessment of the income which was found to be belonging to the assessee and which was not offered as income in the return of income filed by the assessee.”

10. Before us, the assessee appeared in person and pleaded that in the whole process of availing the benefit under the PMGKY scheme, there is no fault on the part of the assessee and that the funds for deposit under the scheme were always lying with the department itself. Hence, it is not a case where any of the conditions to avail the benefit under the PMGKY scheme was not fulfilled and therefore, the tax liability on the amount of Rs.12,00,000/- should be restricted in accordance with the said scheme. On the other hand, the Ld. Departmental Representative relied on the orders of the Assessing Officer and ld. CIT(A).

11. We have considered the submissions made by the assessee and Ld. DR and have perused the material on record. The issue involved here is that the assessee had offered his income of Rs.12,00,000/- under 'PMGKY' scheme and requested the DDIT, Mumbai for considering deposit of 25% of the amount under account specified by the RBI and pay the tax amount (i.e. at the rate of 50 % of undisclosed cash) from the seized amount, so as to

avail the benefit under the PMGKY, 2016 scheme. Relevant part of his request letter is reproduced as under:

“A cash amount of Rs. 12,00,000/- was seized from me under Punchnama dated 08-12-2016 while carrying out search under warrant no. 12631.

I desire to declare the said amount from my current year income, under sub-section (1) of section 199C of the Taxation and Investment Regime for Pradhan Mantri Garb Kalyan Yojana, 2016 as per Notification dated 16-12-2016 read with circular no. 2 of 2017, issued by Ministry of Finance, Department of Economic Affairs, Government of India

Therefore, as per the notification out of the said amount of Rs. 12,00,000/- your office is authorized to pay and adjust:

A) An amount of Rs. 5,98,800/- i.e. 50 per cent towards tax, surcharge and penalty.

B) An amount of Rs. 3,00,000/- i.e. 25 % be deposit in the Pradhan Mantri GaribKalyan Deposit Scheme, 2016

C) Balance amount of Rs. 3,01,200/- be transferred to my saving account bearing no. 03840100018932 with Bank of Baroda, Turner Road Branch, Bandra (West) Mumbai.

I am ready and willing to sign and execute necessary forms and applications as may be required.

As of now I have no other assets.

In the circumstances you are requested to do the needful in the matter at the earliest.”

11.1 Later, he also made an application before the Ld. PCIT for considering his request for opting the PMGKY scheme. The PCIT,

however intimated to the assessee that he was required to deposit 25% of the undisclosed cash under the PMGKY separately and not out of the seized amount therefore, he did not give cognizance to the application of the assessee.

11.2 For ready reference, the provision of the PMGKY scheme explained in Circular no. 43 of 2016 [F.No. 142/33/2016-TPL] are reproduced as under:

“Explanatory Notes on Provisions of the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 as contained in Chapter IX-A of the Finance Act, 2016

Introduction

1. The Taxation Laws (Second Amendment) Act, 2016 has been enacted by Parliament on 15.12.2016. The said Act has inter alia amended the provisions of Finance Act, 2016 and inserted a new Chapter on, 'The, Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter 'the Scheme') in the Finance Act, 2016.

2. The Scheme provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity (which includes banks, post office etc.) to declare such income and pay tax, surcharge and penalty totaling in all to 499 per cent. of such declared income. Besides, the Scheme provides that a mandatory deposit of not less than 25% of such income shall be made in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (hereinafter 'the PMGKY Deposit Scheme) which has separately been notified by the Department of Economic Affairs. The Scheme has commenced on 17.12.2016

and shall remain open for declarations/ deposit upto 31.03.2017.

Scope of the Scheme

3. A declaration under the aforesaid Scheme may be made in respect of any income in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017. No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which a valid declaration is made under the Scheme.

Tax, surcharge, penalty & deposit under the Scheme

4. The person making a declaration under the Scheme would be liable to pay tax at the rate of thirty per cent. of the undisclosed income as increased by surcharge to be called the Pradhan Mantri Garib Kalyan Cess calculated at the rate of thirty-three per cent. of such tax. In addition, penalty at the rate of ten per cent. of the undisclosed income shall be payable.

The declarant shall also be required to deposit an amount not less than twenty-five per cent. of the undisclosed income in the PMGKY Deposit Scheme. The deposit shall bear no interest and the amount deposited shall have a lock-in period of four years.”

11.3 Further, the letter issued by the Reserve Bank of India as how to deposit the amount under scheme in Banks is also reproduced for ready reference as under:



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2016-17/187

IDMD.CDD.No.1453/14.04.050/2016-17

December 16, 2016

(Updated as on April 20, 2017)

The Chairman & Managing Director All
Authorised Banks

Dear Sir/Madam,

Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS), 2016

The [Government of India has vide the notification no. S.O. 4061 \(E\) dated December 16, 2016](#) announced the “Pradhan Mantri Garib Kalyan Deposit Scheme (PMGKDS)”. This Scheme shall be applicable to every declarant under the Taxation and Investment Regime for *Pradhan Mantri Garib Kalyan Yojana, 2016*.

The terms and conditions of the scheme are as under:

2. Eligibility for Deposits.— The deposits under this Scheme shall be made from the 17th day of December, 2016 till 31st day of March, 2017, by any person who declared undisclosed income under sub-section (1) of section 199C of the Taxation and Investment Regime for *Pradhan Mantri Garib Kalyan Yojana, 2016*

3. Form of the deposits.— The deposits shall be held at the credit of the declarant in Bonds Ledger Account maintained with Reserve Bank of India. A certificate of holding shall be issued to declarant in [Form I](#). The Reserve Bank of India shall transfer the deposit received under this Scheme into the designated Reserve Fund in the Public account of the Government of India.

4. Authorised banks.— (a) Application for the deposit in the form of Bonds Ledger Account shall be received by any banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (hereinafter referred to as Authorised Banks).

(b) The Authorised Bank shall electronically furnish the details of deposit made in [Form V](#) to the Department of Revenue, Ministry of Finance, Government of India not later than next working day to enable the Department to verify the information of the deposit before accepting the declaration.

(c) The authorised bank shall upload the details of deposit into Reserve Bank of India’s Core Banking Solution ‘e-Kuber’.

(d) The Reserve Bank of India and Authorised Bank shall maintain the confidentiality of the data received in this regard.

5. Subscription and Mode of investment in the Bonds Ledger Account .— (a) The deposits shall be accepted at all the Authorised Banks .

(b) The deposits shall be made in multiples of rupees one hundred.

(c) The deposit by a declarant shall not be less than twenty-five per cent of the undisclosed income declared under sub-section (1) of section 199C of the Taxation and Investment Regime for *Pradhan Mantri Garib Kalyan Yojana*, 2016.

(d) The entire deposit shall be made, in one or more payments, before filing declaration under sub-section (1) of section 199C *ibid*.

(e) The deposit shall be made in the form of cash or draft or cheque drawn in favour of the authorised bank accepting such deposit or by electronic transfer.

6. Effective date of deposit¹. –The effective date of opening of the Bonds Ledger Account shall be the date of receipt of deposits by the Reserve Bank of India from the authorized banks; wherein the due tax, surcharge and penalty has been received till 31st March, 2017. Also, the date of deposit shall in no case be extended beyond 30th April, 2017.

7. Applications.— (a) An application for the deposit under this Scheme shall be made in **Form II** clearly indicating the amount, full name, Permanent Account Number (hereinafter referred to as “PAN”), Bank Account details (for receiving redemption proceeds), and address of the declarant. Provided that if the declarant does not hold a PAN, he shall apply for a PAN and provide the details of such PAN application along with acknowledgement number.

(b) The application under sub-paragraph (a) shall be accompanied by an amount which shall not be less than twenty-five per cent of the undisclosed income in the form of cash or draft or cheque or through electronic transfer as provided under sub-paragraphs (c) and (d) of paragraph 5.

8. Nomination.— (a) A sole holder or a sole surviving holder of a Bonds Ledger Account, being an individual, may nominate in **Form III**, one or more persons who shall be entitled to the Bonds Ledger Account and the payment thereon in the event of his death.

(b) Where any amount is payable to two or more nominees and either or any of them dies before such payment becomes due, the title to the Bonds Ledger Account shall vest in the surviving nominee or nominees and the amount being due thereon shall be paid accordingly. In the event of the nominee or nominees predeceasing the holder, the holder may make a fresh nomination.

(c) A nomination made by a holder of Bond Ledger Account may be varied by a fresh nomination, or may be cancelled by giving notice in writing to the Authorised Bank in **Form IV**.

¹ Amended on the basis of Government of India notification dated April 19, 2017

(d) Every nomination and every cancellation or variation shall be registered at the Reserve Bank of India through the authorised bank and shall be effective from the date of such registration.

(e) If the nominee is a minor, the holder of Bonds Ledger Account may appoint any person to receive the Bonds Ledger Account or the amount due in the event of his death.

9. Transferability.—The transferability of the Bonds Ledger Account shall be limited to nominee or to the legal heir of an individual holder, in the event of his death.

10. Interest.—The deposits shall not bear any interest.

11. Tradability against Bonds.—The Bonds Ledger Account shall not be tradable.

12. Repayment.—The Bond Ledger Account shall be repayable on the expiration of four years from the date of deposit and redemption of such Bond Ledger Account before its maturity date shall not be allowed.

13. Interpretation.—The words and expressions used but not defined in this notification but defined in the Income-tax Act, 1961 (43 of 1961), the Government Securities Act, 2006 (38 of 2006) or the Finance Act, 2016 (28 of 2016) shall have the meanings respectively assigned to them in those Acts.

Yours faithfully

Sd/-

(Rajendra Kumar)
General Manager”

11.4 Thus, we find that prima-facie the assessee fulfils the conditions of declaration of undisclosed income in the form of cash on or before 1/4/2017. For fulfilling other conditions of deposit of 25 % of undisclosed income in the PMGKY Deposit Scheme, and payment of taxes thereon, he requested the Income-tax department, who was in possession of his undisclosed income in the form of



cash. But no attempts were made by the Department for deposit of 25% of the amount of undisclosed cash under the specified account for PMGKY Deposit scheme. The Id. Assessing Officer and Id. CIT(A) both did not heed to the request of the assessee for deposit of the amount under the scheme, on the ground that CBDT instruction did not provide for deposit of 25% amount under the scheme out of seized cash.

11.5 We have also gone through the Clarifications issued by CBDT vide Circular no. 2 of 2017 [F.No. 142/33/2016-TPL(Part) dated 18th January, 2017, relevant extract of which is reproduced as under:-

“Clarifications on the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016

The Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (hereinafter ‘the Scheme’) provides an opportunity to persons having undisclosed income in the form of cash or deposit in an account maintained with a specified entity to declare such income and pay tax, surcharge and penalty totaling in all to 49.9 per cent of such declared income and make a mandatory deposit of not less than 25% of



such income in the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. The Scheme has commenced on 17.12.2016 and shall remain open for declarations/deposit upto 31.03.2017.

Queries have been received from the stakeholders seeking further clarity on certain provisions of the Scheme. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows:

.....

Question No. 4 :Where a notice under section 142(1)/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year, will such person be eligible for making a declaration under the Scheme?

Answer: Yes such person is eligible to avail the Scheme subject to fulfilment of conditions specified in the Scheme.

Question No. 5 : Can a person against whom a search survey operation has been initiated, file declaration under the Scheme and whether the cash seized during search operation can be declared under the Scheme?

Answer : Yes, a person against whom a search/survey operation has been initiated is eligible to file declaration under the Scheme in respect of undisclosed income represented in the form of cash or deposit in an account maintained with specified entity.



Question No. 11 Whether the cash seized during a search and seizure action of the Department and deposited in Public Deposit Account is allowed to be adjusted against the payments required to be made under the Scheme?

Answer : The adjustment of cash seized by the Department and deposited in the Public Deposit Account may be allowed to be adjusted for making payment of tax, surcharge and penalty under the Scheme on the request of the person from whom the cash is seized. However, the said amount shall not be allowed to be adjusted for making deposits under the Pradhan Mantri Garib Kalyan Deposit Scheme.

11.6 We find that under the various queries and their answer reproduced in above Circular/instruction (supra), the CBDT in answer to question No.5 has explained that undisclosed income in the form of cash found and seized during the search is eligible for the PMGKY Scheme, But in answer to question No. 11 has explained that said seized amount might be adjusted against the tax amount but shall not be allowed to be deposited under the Scheme. There is obvious contradiction in this explanation in question no. 9 of the CBDT on the Scheme. The money of the



assessee was seized and in the possession of the Income-tax Department, which remained deposited with the Income-tax Department in a separate current account (Namely Personal Deposit or PD Account) of PCIT. The CBDT on one side had no objection for admitting seized cash under PMGKY scheme but on the other hand did not heed to request of the assessee to deposit that money under the Scheme. The instruction on the part of the CBDT and consequent inaction on the part of lower authorities is not in the spirit of the scheme and not as per intention of the legislature. The fact of the matter is that the undisclosed funds are already lying with the Income Tax Department and assessee has repeatedly requested for transferring those funds to specified account under scheme but not to his avail. The assessee specifically intimated that he did not any other asset separately with him for deposit of 25% amount under the scheme. In such a situation, it is completely beyond the control of the assessee to make separate deposit to the RBI under PMGKY, when the amount of income of Rs.12,00,000/- remained with the department in the form of cash



seizure. The assessee in his request before the DDIT made it clear that he was not having any other assets for separate deposit under scheme. In our considered view, the assessee cannot be burdened with an action which is impossible or completely beyond his control. The Department was under obligation to assist the assessee in availing the benefit under the PMGKY scheme because the Department was sitting over the undisclosed cash of the assessee. We find that the assessee is not in fault and if he otherwise fulfills all the conditions prescribed under the PMGKY, 2016, then, there is no reason as to why the benefit of tax rate [i.e. @ 50%] should not be granted to the assessee under the said scheme. **The principles embodied in the legal maxims 'lex non cogit ad impossibilia' and 'impotentia excusat legem' could come to the rescue in such situations. Simply put, law does not compel a man to do that which cannot possibly be performed (lex non cogit ad impossibilia), and law will generally excuse a default if a party is unable to perform a duty created by law without any default in him and where he has no remedy (impotentia excusat legem).**



11.7 We, therefore restore the matter back to the Ld. Assessing Officer and direct him to consider the assessee as deemed to have complied to the provisions of the PMGKY scheme and charge tax to the extent of provided under the PMGKY Scheme. In the result, the ground no. 1 and 2 of the appeal are allowed for statistical purposes.

Ground no. 3

12. The ground no. 3 of the appeal relates to the explanation of the assessee about the source of the cash found of Rs.12,00,000/- and that the same should not be added to his total income. The brief facts qua this issue are that although the income of Rs.12,00,000/- was offered in the statement recorded on oath u/s. 132(4) of the Act, the same was not declared in the return of income filed u/s. 153A of the Act. In the course of assessment proceedings, in response to notice issued u/s. 142(1) of the Act, the assessee stated that the source of cash belonged to one Shri Anil Thakkar and Shri Kunal Kalsaria and for which their Affidavit were also filed.



However, on perusal of the assessment order and the order of the Ld. CIT(A), we find that the affidavits of those parties have not been considered earlier by any of the authorities below. In the circumstance, we deem fit that the said issue of explanation of source of Rs.12.00 lakhs be restored back to the file of the Assessing Officer for deciding in accordance with law. It is needless to mention that adequate opportunity of being heard shall be provided to the assessee. Accordingly, the said ground of appeal is allowed for statistical purposes.

13. We would like to mention that firstly, the plea of the assessee raised in ground no. 3 for examining the source of Rs. 12,00,000/- in the hands of the assessee should be dealt by the Assessing Officer. In case he succeeds on this ground, then direction given in Ground No. 1 will become infructuous. However, if the assessee does not succeed on plea in ground No. 3, then the Assessing Officer should follow our directions given on the issue of plea of the assessee for considering the benefit under the PMGKY, 2016 scheme.



14. The appeal of the assessee is accordingly allowed partly for statistical purposes.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 22/12/2022.**

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/12/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Sr. Private Secretary)
ITAT, Mumbai