

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 653/Kol/2022**  
**Assessment Year: 2017-18**

|  |     |                           |
|--|-----|---------------------------|
| Redha Tshering Bhutia<br>(PAN: AUNPB 8854 C) | Vs. | ITO, Ward-3(1), Gangtok   |
| Appellant / (अपीलार्थी)                      |     | Respondent / (प्रत्यर्थी) |

|   |                               |
|---|-------------------------------|
| Date of Hearing / सुनवाई<br>की तिथि             | 22.12.2022                    |
| Date of Pronouncement/<br>आदेश उद्घोषणा की तिथि | 17.01.2023                    |
| For the Appellant/<br>निर्धारिती की ओर से       | Shri Subash Agarwal, Advocate |
| For the Respondent/<br>राजस्व की ओर से          | Shri P. P. Barman, Addl. CIT  |

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 22.09.2022 for the AY 2017-18.


2. The only issue raised by the assessee is against the confirmation of addition of Rs. 20,10,000/- by the Ld. CIT(A) which was made by the AO on account of cash deposits into various bank accounts during demonetization period by treating the same as unexplained money in terms of provisions of Section 69A of the Act by holding that t benefit of Section 10(26AAA) of the Act was not available to the assessee.

3. Facts in brief are that the assessee filed return of income on 26.03.2018 declaring returned income as NIL. Subsequently the case was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. The AO issued various notices to the assessee from time to time, however, no compliances were made. Finally the AO framed assessment u/s 144 of the Act by assessing the income at Rs. 20,10,000/- on the basis of ITS data and also on the basis of bank statements of two banks ICICI Bank and Central Bank of India to whom the notices were issued u/s 133(6) of the Act directing to furnish the account statements for the above period. The AO observed that the assessee has deposited Rs. 20,10,000/- in these accounts during the demonetization period i.e. from 9.11.2016 to 31.12.2016 the details whereof are given at page no. 1 and 2 of the assessment order and added the same to the income of the assessee u/s 69A of the Act.

4. The Ld. CIT(A) in the appellate proceedings dismissed the appeal of the assessee by holding that the assessee has failed to substantiate the source of deposit.


5. After hearing the rival contentions and perusing the material on record, we find that the assessee is an individual being resident of Sikkim and his income is exempted within the meaning of Section 10(26AAA) of the Act. Undisputedly the assessee is a retail trader and has been issued license on 22.04.2014 by Gangtok Municipal Corporation, Deorali, Sikkim which was renewed on 17.04.2019 and the assessee was allowed to carry on the business of grocery except controlled items, ritual articles, handicraft/wood/carving/weaving/bamboo carving and class-III [small shop dealing with ready made garments only]. The said certificates are reproduced as under:


*I.T.A. No.653/Kol/2022*  
*Assessment Year: 2017-18*  
*Redha Tshering Bhutia*



**GANGTOK MUNICIPAL CORPORATION**  
**DEORALI, SIKKIM**

Trade License  
(NOT TRANSFERABLE)





BRN: GMC0040316

Issued On: 22-04-2014  
Renewed On: 17-04-2019


To,  
**Redha Tshering Bhutia**  
Guardian: **Late Norbu Bhutia**  
**Chandbari**  
**04, Chandmari Ward**

1. You are permitted to carry on trade on the articles/items mentioned in this certificate subject to the terms and conditions specified on the next page for which a sum of **Rs. 2650.00** only has been received vide Online Payment with Reference Id **GbkQs1W7KGo14McO8L1R** dated 17-04-2019 being the license fee for the year ending **31-03-2020**.

2. You shall run the trade in the building/house of Shri/Smt. Phupu Doma Bhutia at Chandbari under 4, Chandmari Ward.


| Sl. No. | Description of Business                                       | Trade License Fee (Rs./Year) | Garbage Fee (Rs./Month) |
|---------|---|------------------------------|-------------------------|
| 1       | GROCERY (EXCEPT CONTROLLED ITEMS) RETAIL                      | 350.00                       | 100.00                  |
| 2       | RITUAL ARTICLES   | 350.00                       | 100.00                  |
| 3       | HANDICRAFT/WOOD CARVING/WEAVING/BAMBOO CARVING                | 250.00                       | 100.00                  |
| 4       | CLASS-III (SMALL SHOPS DEALING WITH READY MADE GARMENTS ONLY) | 500.00                       | 100.00                  |
|         |   |                              | TOTAL: Rs. 2650.00      |

N.B. THIS LICENSE MUST BE DISPLAYED IN ORIGINAL AT THE PLACE OF TRADE.

  
Signature of Licensing Authority  
Deputy Municipal Commissioner  
Gangtok Municipal Corporation  
Gangtok

Certified To Be True Copy A/R



2/2/2015



Government of Sikkim

OFFICE OF THE DISTRICT COLLECTOR  
 GOVERNMENT OF SIKKIM  
 EAST DISTRICT, GANGTOK

Registration of Firm

1. Name of the Firm: ROYAL DEMAZONG

2. Details of Proprietor/Partners:

| Name                  | S/o, W/o            | Present Address   | Permanent Address | Whether in Government Service? (Yes/No) |
|-----------------------|---------------------|-------------------|-------------------|---|
| REDHA TSHERING BHUTIA | LATE - NORBU BHUTIA | CHANDMARI GANGTOK | " "               | No                                      |
|                       |                     |                   |                   |   |

3. Address of the Firm: CHANDMARI, GANGTOK, E. SIKKIM (Yes/No)

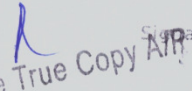
4. Valuation of the Firm (as on date): 5 LAKHS

5. Nature of Business: (Trade/Service/Profession):  Trade TRADE

6. Details of Trade/Service/Profession:

7. Details of Trade License issued by UDHD: 2(4)45/6/MC/2014/236

Date: 16/1/15

  
 Signature of the Proprietor/Partners

Certified To Be True Copy

During the year the assessee has made turnover of Rs. 73,01,166/- from the proprietary business and was also having income by way of interest and LPG subsidy of Rs. 18,934/-. These facts are not in dispute. The assessee calculated his income on presumptive basis u/s 44AD of the Act and offered net profit of Rs. 6,79,974/- from business. The assessee offered total income of Rs. 6,98,908/- which comprised of business profit of Rs. 6,79,974/- , bank interest of Rs. 15,651/- and LPG subsidy of Rs. 3,283/-. The assessee was not maintaining any books of account. The assessee after availing exemption u/s 10(26AAA) of the Act reported Nil income. We note that the assessee has submitted that the cash deposits in the various bank accounts were out of sales made in the proprietary business carried on under the name and style Royal Demazong and also out of realization from business debtors. After having perused the orders of authorities below, we observe that the total cash deposits in the banks were to the tune of Rs. 20,10,000/- while the assessee made a turnover of Rs. 73,01,166/- during the year. In our opinion, the assessee has discharged his onus by placing the facts before the authorities below that the cash deposits were out of cash sales and realization from the sundry debtors from the proprietary business carried on by the assessee for which the license has been issued by the Municipal Corporation, Deorali, Sikkim. If we consider the quantum of cash deposits into bank accounts of the assessee and the quantum of the business of the assessee, then the explanation of the assessee seems to be reasonable and deserves to be accepted. Accordingly we reverse the order of Ld. CIT(A) and direct the AO to delete the addition.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 17<sup>th</sup> January, 2023

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 17<sup>th</sup> January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Redha Tshering Bhutia, C/o, Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor, Kolkata-700069
2. Respondent – ITO, Ward-3(1), Gangtok
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata