

**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 SonjoySarma, Judicial Member]

**I.T.A. No. 671/Kol/2022**  
**Assessment Year: 2016-17**

Sri Om Prakash Gupta (PAN: ANPPG 8341 L)	Vs.	ITO, Ward-45(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.01.2023
For the Appellant/ निर्धारिती की ओर से	Swati Baid, A.R
For the Respondent/ 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 28.09.2022 for the AY 2016-17.

2. The only issue raised by the assessee is against the confirmation of addition of Rs. 18,75,000/- by the Ld. CIT(A) thereby upholding the addition made by the AO on account of opening cash balance of Rs. 18,75,000/- wrongly treating the same as income from undisclosed sources.

3. Facts in brief are that the assessee filed return of income on 11.01.2007 declaring total income of Rs. 2,30,720/-. The case of the assessee was selected for scrutiny under CASS to verify the cash deposits which allegedly were made from the undisclosed sources by the assessee. Accordingly the assessee was called upon to furnish books of accounts along with bills and vouchers by the AO. The AO observed on the basis of cash book, details of purchase and sales that assessee has shown opening and balances of cash Rs. 18,75,000/- and Rs. 2,35,601/- respectively and during the year made turnover Rs. 93,57,416/-. The AO also noted that during the assessment proceedings that in the assessment year i.e. AY 2015-16, the assessee has not filed any return of income for the reason that it has no taxable income. Accordingly a show cause notice was issued as to why the opening balance should not be treated as undisclosed income during the year for which no reply was received and the same was added to the income of the assessee by the AO in the assessment framed u/s 143(3) of the Act vide order dated 17.12.2018.

4. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO by simply stating that the assessee has no business activity during FY 2014-15 and the plea of the assessee that the cash was brought forward from earlier year as opening balance cannot be accepted. Finally the Ld. CIT(A) while dismissing the appeal relied on the few decision of the Hon'ble Courts thereby holding that onus of proof is on the assessee explain the deposits in the bank account satisfactorily and if explanation provided by the assessee is unbelievable or an attempt is made to give false statement, the authorities are bound to reject and bring to tax such deposits as unexplained cash credit.

5. After hearing the rival submissions and perusing the material on record, the undisputed facts are that the assessee in FY 2014-15 did not file any return of income for the reason that income was below taxable limit and also did not maintain any books of accounts. In the instant assessment year, the assessee maintained books of account and books were duly audited by the auditors of the assessee and audited report

is placed from page no. 8 to 15 of the PB. We have also examined cash books which is attached at page 27 to 45 and note that total sales during the year were Rs. 93,57,416/- and cash balance at the end of the year was Rs. 2,35,601/- . We note that during FY 2015-16 the opening balance as on 01.04.2015 in the bank account no. 20019523363 was Rs. 95,603/- and the assessee opened another bank account no. 06010210000885 on 21.07.2015 and the assessee has only one bank account during the FY 2014-15. The assessee is engaged in the business of vegetable trading and prior to instant year never filed income tax return or prepared any books of accounts. The contentions of the assessee was that all the receipts were in cash and payments were also made to the vegetable suppliers in cash. During the year, the assessee returned income by applying 8% on turnover u/s 44AB of the Act. Now the assessee is before us whether the opening balance which was disbelieved by both the authorities below is correct or not and whether assessee can be given the benefit of inherent and attendant difficulties keeping in view the nature of trade the assessee was carrying on. We note during the year the assessee has maintained books of account and accounts were audited too. If at all the money is to be treated as unexplained cash in the books of account of the assessee then that cannot be done during the current year. The authorities below could have added this amount in the earlier assessment year from which it was brought forward as opening balance. The authorities have simply discarded the plea of the assessee that in the earlier years the assessee has not filed income tax return and therefore opening balance cannot be accepted. Considering the nature of trade of the assessee and the fact that the assessee was into this business from several years , we are of view that the assessee can very well hold the cash balance of this much amount. Keeping in view the nature of trade of assessee and also that this is not legally correct to make the addition in the current year as the balance is coming from earlier year, therefore we are not in a position to agree with the conclusion drawn by the Id. CIT(A). Accordingly we set aside 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/-  
(SonjoySarma /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- Sri Om Prakash Gupta, 33, Block-A, DewanGazi Road, Bally, Howrah-711201
2. Respondent – ITO, Ward-45(1), Kolkata
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