

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.2438/M/2022
Assessment Year: 2017-18**

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| Shri Jaywant Shyam Rathod, Survey No.174, Hissa No.1A, Makunsar, Near Makunsar Overbridz, Palghar, Maharashtra- 401102 PAN: AFDPR0831E | Vs. | National Faceless Appeal Center (NFAC), Room No.356, C.R. Building, IP Estate, New Delhi, Delhi – 110002 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Raman Shah, A.R. &
Shri Rushabh Vora, A.R.

Revenue by : Shri Krishna Kumar, D.R.

Date of Hearing : 01 . 12 . 2022

Date of Pronouncement : 22 . 12 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Jaywant Shyam Rathod (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 26.08.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2017-18 on the grounds inter-alia that :-

“Ground No. 1:

Addition made u/s 69A on account of Cash Deposited of Rs.10,25,000/-

a. On the fact and circumstances of the case, The learned Assessing Officer has erred in making addition of Rs. 10,25,000/- on account of unexplained income in the form of cash deposited during demonetization period by the appellant in HDFC Bank, Saphale Branch, u/s 69A of the Income Tax Act, 1961. The Id. AO wrongly made addition u/s 69A, which is not at all applicable to the assessee, as assessee has fully disclosed said deposit in his books of accounts and return of income filed subsequently.

b. On the fact and circumstances of the case, the learned Assessing Officer has erred in arguing that money received in Specified Bank Notes (Old Currency) at Rs.10,25,000/- is unaccounted and unexplained money.

c. On the facts and in the circumstances of the case and in law, the Id. AO erred in considering the modus operandi of Small Hotel Business i.e. Beer shop business of the Assessee and making addition of Cash Deposited into the bank during the demonetization period at Rs.10,25,000/-. Hence addition made u/s 69A is not proper and hence not applicable in assessee case.

d. Further, the learned CIT (A) passed the Non-speaking order i.e. without considering the submission made by us at the time appeal proceeding.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: on the basis of information gathered by the Income Tax Department the assessee was found to have deposited cash amount to the tune of Rs.10,18,000/- during the demonetization period. Assessing Officer (AO) noticed that the assessee has not filed the return of income for the year under consideration under section 139(1) of the Income Tax Act,1961 (for short ‘the Act’) in spite of the fact that the assessee has deposited cash amount of Rs.10,18,000/- during the demonetization period. Intimation was sent to the assessee to file online response in respect of his cash deposit but the assessee has not responded. Thereafter, notice under section 142(1) of the Act was issued through Income Tax

Business Application (ITBA) and was delivered online and also through speed post requiring the assessee to furnish the return of income but the assessee again failed to respond. Then the AO proceeded to frame the assessment on the basis of best judgment assessment after making analysis qua the cash deposit by the assessee in his bank account maintained with HDFC bank which the assessee has failed to explain. Consequently the AO has framed the assessment at the total income of Rs.13,56,000/- under section 144 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the addition made by the AO by dismissing the appeal. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the assessee that the assessment has been framed by the AO in the absence of the assessee and on the basis of incorrect fact that the assessee has not filed any return of income whereas the assessee in response to the notice under section 142(1) of the Act has filed the return of income along with computation of income and brought on record its acknowledgment available at page 11, 12 & 13 of the paper book. The AO has categorically mentioned in para 2.1 that the assessee has not filed the return of

income for the year under consideration under section 139(1) of the Act. Whereas it is categoric case of the assessee that in response to the notice under section 142(1) of the Act return of income supported with computation of income has been filed.

6. The Ld. CIT(A) has also decided the appeal merely on the basis of the fact that the assessee has failed to substantiate its source of cash deposit in the bank before the AO when the return before the AO along with computation of income was filed by the assessee but the AO framed the assessment by recording the fact that return of income was never filed by the assessee. In para 13 of the assessment order the assessee has also recorded in the column returned income-NA(note ITR filed) I am of the considered view that this is a case of not providing opportunity of being heard to the assessee.

7. Even the Ld. CIT(A) during the appellate proceedings has not considered this fact that the assessee has duly filed the return, explained the sources of collection of cash as dhaba/restaurant owner but upheld the order in mechanical manner by returning following findings:

“8. I have carefully considered the facts of the case and found that there is no need to interfere the addition made by AO u/s 144 of the IT Act, total amounting to Rs.13,56,000/- During the assessment proceedings the appellant has provided ample opportunity for confirmations and substantiate the identity, creditworthiness of the lender and the genuineness of the transaction. However, in spite of extending sufficient opportunities the appellant was failed the furnished any shred of details/evidences to substantiate the claims made by it in the return of income. Hence the objection raised by the appellant is fully devoid of merits of assessment order so the addition made by AO is sustained and ground raised by the appellant is hereby dismissed.”

The AO has made addition of Rs.10,25,000/- and on cash deposit in his bank accounts maintained with HDFC Bank, Saphale Branch, since the appellant has not produced documentary evidence in support of his claim.

9. Considering the entirety of facts, circumstances and material on record and looking into preponderance of probabilities here the appellant has miserably failed to substantiate its claim of having either received the amount of the said transaction as unexplained money and has also not even been able to establish that he could himself accumulate such huge amount from the sources disclosed, therefore, the AO is fully justified in making/confirming the disallowance in the amount of Rs.10,25,000/-, found as unexplained money of the appellant. In this condition the addition made by AO factually and legally correct is upheld and the plea of the appellant on this issue is dismissed being devoid of any merits.”

8. In view of what has been discussed above, I am of the considered view that it is a case of no enquiry where no adequate opportunity of being heard was given to the assessee by the AO rather assessment has been framed the on the basis of incorrect fact. In these circumstances, the impugned order passed by the Ld. CIT(A) is set aside and case is remanded back to the AO to decide afresh after providing opportunity of being heard to the assessee and by taking into account the return of income supported with computation of income filed by the assessee. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.12.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 22.12.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.