

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1111/M/2022
Assessment Year: 2017-18**

Mrs. Sanjana R. Jain, 304, Disha Apartment, Ghela Devi Chowk, Bajar Peth, Kalyan, Thane. PAN: Awnpj7991G	Vs.	Income Tax Officer, Ward (4), 2 nd Floor, Rani Mansion, Murbad Road, Kalyan - 421301
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dhaval Shah, A.R.
Revenue by : Shri Pramod Nikalje, D.R.

Date of Hearing : 24 . 11 . 2022
Date of Pronouncement : 23 . 12 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mrs. Sanjana R. Jain (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 14.03.2022 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 :-

“a) The Ld. CIT (A) has erred in confirming the addition made by the Ld. AO for Rs. 10,00,000/- u/s 69A of the Income Tax Act, 1961 being the amount of cash deposited in Bank Account without considering the facts and circumstances of the case. The same be considered and the additions be deleted.

b) The Ld. CIT(A) has erred in treating the transaction of cash deposited during demonetization, as unexplained money and proceeded to continue to confirm the addition made by the Ld. AO without considering the facts and circumstances of the case. The same be considered and the additions be deleted.

c) The CIT(A) has erred in confirming the addition made for Rs. 10,00,000/- by the Ld. AO u/s 69A of the Income Tax Act, 1961 without appreciating that the appellant had duly proved the Source and Nature of the Source of the cash deposited during demonetization. The additions made are merely on assumptions which are not sustainable in law.

d) The Learned CIT(A) has erred in stating that the appellant has not furnished supporting documentary evidence without considering that appellant has filed the copy of bank account, Trading and P&L Account, Balance Sheet and Computation of Income. The same be considered and the additions be deleted

e) The CIT(A) has failed to appreciate that the Ld. AO has made the additions on the assumption that the money deposited in Bank account is not recorded in the books of accounts of the appellant without appreciating the fact that the said amount is shown as closing balance in the balance sheet as on 31.03.2016. The Order passed on such basis is bad in law and needs to be quashed.

f) The Ld. AO as well as the Ld. CIT(A) failed to consider that the appellant is an Individual having a business of Beauty Parlour & providing tuition to small children wherein income is earned only in cash in small denominations. The same be considered and the additions be deleted.

g) The Ld. AO as well as the Ld. CIT(A) has erred in confirming the addition of Rs. 10,00,000/- on the ground that appellant has failed to disclose cash in Income Tax Return filed in Form ITR-2 without considering the facts that the assessee has duly disclosed cash in her books of accounts. The same be considered and the additions be deleted.

h) The Ld. AO as well as the Ld. CIT(A) has erred in ascertaining the average monthly income of the appellant by taking the annual income of the appellant, but erred in not considering the opening cash in hand as per the submitted financial statements. The same be considered and the additions be deleted.

i) The Ld. AO as well as the Ld. CIT(A) has failed to consider the cash balance in the books of accounts of the assessee without rejecting the books of accounts of the assessee u/s 145(3) of the Act. The same be considered and the additions be deleted.

The assessee craves leave add, alter or delete to the grounds of appeal at the time of or before hearing”

2. The assessee by filing an application sought to condone the delay of 04 days in filing the present appeal on the ground that she has received the order passed by the Ld. CIT(A) on 14.03.2022 through email, however, inadvertently the said email was received in spam hence could not be attended on time. But subsequently on verification of spam folder it was seen that the said order was received on 14.03.2022. From the reason stated by the assessee in her application for condonation of delay I find that this is a sufficient cause with the assessee being a small business women, she might not be conversant with the technicalities so the delay of 04 days is hereby condoned.

3. Briefly stated facts necessary for adjudication of the issues at hand are: the assessee is into the profession of tuition work and beauty parlor. The assessee's return of income declaring total income of Rs.34,130/- was subjected to scrutiny to examine cash deposit during demonetization period. Necessary notices were issued under section 143(2) and 142(1) of the Income Tax Act,1961 (for short 'the Act') whereby the assessee was called upon to disclose her sources of income, copy of bank statements and sources of various cash deposits made during demonetization period. The assessee filed requisite evidence before the Assessing Officer (AO) viz. copy of bank statement, detail of cash deposits, income and expenditure account, balance sheet, capital account etc. but the AO recorded that no explanation regarding source of cash deposit has been filed by the assessee. From the bank statement the

AO noticed that the assessee has made total cash deposit of demonetization currency amounting to Rs.10,50,000/- on six occasions till 29.11.2016. The assessee has shown total income or receipt from beauty parlor and tuition fee at Rs.8,15,785/- in the return of income filed for the year and has offered income under section 44AD at 8% on cash deposits. Declining the contentions raised by the assessee the AO proceeded to make addition of Rs.10,00,000/- as unexplained money under section 69A of the Act and thereby framed the assessment under section 143(3) of the Act.

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

5. 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.

6. Undisputedly, the assessee being into the business of beauty parlor and tuition work deposited demonetization currency notes of Rs.10,00,000/-. It is also not in dispute that the assessee has offered income under section 44AD at 8% on cash receipts. It is the case of the assessee that she was having sufficient income year on year basis and drew the attention of the Bench towards cash book opening balance, bank statement, cash book pertaining to the subsequent years.

7. I have perused the evidence referred to by the Ld. A.R. for the assessee. The assessee brought on record the detail of cash income earned during the year under consideration, preceding years and succeeding years in tabulated form which is as under:

Sr. No.	A.Y.	Turnover	Cash income earned during the year	Cash deposit during the year	Closing Cash Balance as per capital account
1	2016-17	6,75,840	3,65,120	1,00,000	13,20,364
2	2017-18	8,15,785	4,01,130	10,50,000	9,73,500
3	2018-19	7,18,040	3,13,020	8,00,000	7,77,897

8. Then the assessee drew my attention towards cash book maintained for the period 01.04.2016 to 31.03.2017 wherein opening balance of Rs.13,20,364/- is shown and as on 08.11.2016 the assessee was having cash balance of Rs.15,99,609/-. Furthermore, bank statement brought on record from page 1 to 6 of the paper book shows that the assessee had sufficient funds in her account all the times. From the income and expenditure account available at page 8 & 9 of the paper book which is for A.Y. 2016-17 and 2017-18 wherein closing balance with the assessee i.e. cash in hand was Rs.13,20,364/- and in A.Y. 2017-18 the year under consideration the assessee has cash in hand of Rs.9,73,500/-. Even in the next assessment year i.e. 2018-19 the assessee's cash deposit of Rs.8,00,000/- has been admitted by the Revenue itself.

9. In view of above evidence, I am of the considered view that the assessee has duly explained the cash in hand having been collected from her beauty parlor business and tuition work. All these evidences were there before the AO as well as the Ld. CIT(A)

but they have brushed aside the same without examining the same and proceeded to make the addition. Since the cash deposit of demonetization currency by the assessee is duly explained the addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable.

10. Identical issue was decided by the co-ordinate Bench of the Tribunal in case of DCIT vs. Anuya Jayant Mhaiskar in ITA No.1517/M/2021 order dated 21.07.2022 and Nemchand Vasanji Chheda vs. ITO in ITA No.2467/M/2021 order dated 21.07.2022 wherein it is held that when sufficient unutilized funds in the books are available with the assessee no addition can be made. So the closing balance or cash in hand with the assessee is certainly disclosed income and opening balance cannot be considered as undisclosed income. Moreover, the assessee has been regularly filing return of income and has duly shown her income in the preceding as well as succeeding years earned in cash.

11. In view of what has been discussed above, the addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, hence, ordered to be deleted.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.12.2022.

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

Mumbai, Dated: 23.12.2022.

* 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.