

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2938/Mum/2022
(A.Y: 2017-18)

Aman Fateulla Mogul Shop No. 2, ONGC Bldg No.1, ONGC Bandra Reclamation, Bandra (W), Mumbai – 400050.	Vs.	ITO 23(1)(1) Matru Mandir Mumbai – 400007.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAPM9284G		
Appellant	..	Respondent

Appellant by :	Ms.Neelam Jadhav.AR
Respondent by :	Ms.Jayashree Thakur.DR

Date of Hearing	17.01.2023
Date of Pronouncement	19.01.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A), passed u/s 143(3) and 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon’ble Tribunal and filed an affidavit for condonation of delay and relied on the decision of Hon’ble Supreme Court. We found the facts mentioned

in the affidavit are reasonable and the Ld. DR has no specific objections. Accordingly, condone the delay and admit the appeal.

3.The assessee has raised the following grounds of appeal:

1. The Learned CIT(A) erred in confirming addition of cash deposited in Standard Chartered Bank account of Rs.20,00,000/- u/s 68 of the Act, without appreciating that the said cash deposits was capital withdrawal from the Partnership Firm called "Toyota Tech" on 07/11/2016 which was a very same day of demonetization declared by the Prime Minister from 08/11/2016, the appellant was left no any option to deposits the same amount in the bank in time gap interval. The Learned CIT(A) failed to appreciate that the said cash withdrawals was out of capital withdrawal from the partnership firms and these withdrawals are reflecting in cash book of both the parties. Therefore, Addition confirm under section 68 for cash credit in the hands of Appellant may be deleted.

2. The Learned CIT(A) failed to appreciate that, the discloser of the Cash Deposits during demonetization period was submitted with the department while filling the return of Income for AY 2017 2018 as well as during the assessment and appellate - proceedings. Hence, Appellant had successfully discharged onus of explaining that deposit made in the bank were from his own capital funds from the firms, therefore additions confirmed under section 68 liable to be deleted.

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3. The learned CIT(A) failed to appreciate that, when the appellant had submitted detailed cash summary showing inflow and outflow of cash for relevant year and relevant period, Ledger Account of the Partners Capital Account, Balance sheet of the Partnership, Cash Book of Partnership as well as source of the cash deposits in bank account, then there is no ground to confirmed the addition under section 68, hence the same may be deleted.

4. Without prejudice to the above, the CIT(A) and AO simply relied on the cash book of the Partnership Firm "Toyota Tech" wherein entries in the name of "walk in customers" reflected, confirmed the addition in the hands of the Appellant under section 68 for cash credit. Without appreciating that books of accounts of the Partnership Firm is different from the books of accounts of the Appellant as both the entities are different, hence the department cannot go beyond its jurisdiction and confirmed addition in the hands of the Appellant for cash credit. As the Partnership Firm has disclosed all the facts and figures in its audited books of accounts and filed its Return of Income. Hence, addition confirmed of Rs.20,00,000/- may be deleted.

5. The Learned CIT(A) erred in passing a speaking order, and simply follow the AO's Order, hence the order passed under section 250 may be quashed.

6. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.

4. The brief facts of the case are that the assessee is an individual and derives income from house property, income from business as a partner, income

from capital gains and income from other sources. The assessee has filed the return of income for the A.Y 2017-18 on 06.02.2018 disclosing a total income of Rs.10,06,790/-. Subsequently, the case was selected for scrutiny under CASS and the notice u/s 143(2) and 142(1) of the Act are issued. The Assessing officer (AO) found that the case was selected for scrutiny as the assessee has made cash deposits during the demonetization period in the Standard Chartered Bank Account and the explanations were called. In compliance, the assessee has submitted that he is a partner of M/s Toyota Tech and has withdrawn the cash from capital account and deposited in the bank account dealt at page 2 Para 2 of the order. Whereas the A.O. was not satisfied with the explanations and found that the partnership firm in the F.Y 2016-17 has disclosed the cash deposits in the books of account showing the walk in customers, but could not substantiate the nature and details of the transactions with the bills and vouchers. Finally the A.O. has made addition of unexplained cash deposits u/s 68 of the Act and assessed the total income of Rs.30,06,792/- and

passed the order u/s 143(3) of the Act dated 29.11.2019.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but has confirmed addition and dismissed the appeal of the assessee. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the AO in respect of cash deposits u/s 68 of the Act, irrespective of the fact that the assessee is partner and has earned income from partnership firm and the source being withdrawal from capital account of partnership firm. The Ld. AR also emphasized that the assessee has substantiated the transactions before the lower authorities and supported the submissions with the factual paper book and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the lower authorities.

7. Heard the rival submissions and perused the material on record. The sole matrix of the disputed

issue is with respect to cash deposits of Rs. 20 lakhs in the F.Y 2016-17 during the demonetization period. The contentions of the Ld. AR that the cash deposits are made out of withdrawals from capital amount and referred to the capital account placed at page 14 of the paper book. The assessee has filed the computation of income explaining that the assessee is a partner and has received remuneration from partnership firm along with the other income. On perusal of the facts, the assessee is maintaining debit balance as on 01.04.2016 in the books of partnership firm and the assessee has made further withdrawals. When a query raised to explain how the money was generated in the hands of the partnership firm, the Ld. AR submitted that the partnership firm has received the amounts from the walk in customers in the said financial year. Further the Ld.AR mentioned that the similar addition of cash deposits were made in the case of the partnership firm and referred to the A.O. order at page 46 to 49 of the paper book. On perusal of the assessment order, it was found that on similar dispute, the cash deposits u/s 68 of the Act of Rs.46,36,000/- was added. The Ld.AR explained

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that the appeal is pending before the CIT(A). The contentions of the Ld. AR that since the source has been explained therefore the assessee's claim has to be allowed but the fact remains that the original source from where the assessee has withdrawn the money i.e the partnership firm is doubtful and the assessee claiming that the same has to be allowed cannot be accepted. Considering the facts that the appeal of the partnership firm is pending before the CIT(A), therefore to meet the ends of justice, restore the disputed issue to the file of the CIT(A) to adjudicate fresh and pass a speaking order and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19.01.2023.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.01.2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai