

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,  
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.239/SRT/2022 (AY 2017-18)**

(Hearing in Virtual Court)

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| Jinesh Kamal Jain<br>B1, C1, Somnath Mahadev<br>Society, Parele Point, Surat-<br>395007<br><b>PAN No: BBCPJ 1932 J</b> | Vs | Income Tax Officer, Ward-<br>1(1)(4), Room No.110, 1 <sup>st</sup><br>Floor, Aayakar Bhawan, Near<br>Majura Gate, Opp. New Civil<br>Hospital, Surat-395001 |
| <b>अपीलार्थी/ Appellant</b>  |    | <b>प्रत्यर्थी / Respondent</b>   |

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|---|-------------------------|
| निर्धारिती की ओर से /Assessee by        | Shri Rajesh C Shah, C.A |
| राजस्व की ओर से /Revenue by             | Shri Vinod Kumar, Sr-DR |
| सुनवाई की तारीख/Date of hearing         | 06.02.2023              |
| उद्घोषणा की तारीख/Date of pronouncement | 13.03.2023              |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld.CIT(A)”] dated 30.06.2022 for assessment year 2017-18, which in turn arises out assessment order passed by Income-tax Officer-ward-1(4)(4)/ Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 12.12.2019. The assessee has raised the following grounds of appeal:-

*“1. On the facts and in the circumstances of the case as well as law on the subject, the learned assessing officer has erred in making addition u/s 69A of the Act of Rs.9,75,500/- u/s 143(3) of the Act.*

*2. The Ld. A.O has erred in making addition by overlooking the return of income filed by the assessee for earlier years.*

*3. Appellant craves leave to add, alter or delete ground(s) either before or in the course of hearing of the Appeal.”*

2. Brief facts of the case are that assessee is an individual, filed his return of income for the assessment year 2017-18 on 01.08.2017 declaring income of Rs.4,29,100/-. The case was selected for scrutiny. During the assessment, Assessing Officer noted that as per information available of ITBA portal, the assessee made cash deposit of Rs.10.75 lakh of old currency Notes of Rs. 500/- and Rs.1000/- during demonetization period in HDFC Bank Ltd. The assessee was asked to explain the nature and source of such deposits. The assessee filed his reply and stated that he was having sufficient cash balance on hand as on 31.03.2014 at Rs.4,92,185/-. The Assessing Officer after verification of chart showing cash-in-hand and cash flow statement held that return of assessee does not commensurate with the cash deposits in the assessment year 2016-17 the assessee has shown income at Rs.4,02,830/- and cash expenses of Rs.2,74,895/- have been shown. On further verification, it was noted that cash of Rs.2.00 lakh was deposited during

the year in assessee's bank account. From such fact, it is apparent that no cash-on-hand would be available with the assessee. However, the Assessing Officer took his view that considering the previous income profile, it would be reasonable to estimate that cash-in-hand at Rs.1.00 lakh and remaining cash deposit of Rs.9.75 lakh was treated as unexplained and added under section 69A and taxed the same under section 115BBE.

3. On appeal before Ld. CIT(A), the case was migrated to NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee challenged the addition. The assessee filed his detailed written submission. The submission of assessee is recorded in para-4.2 of the order of NFAC/Ld. CIT(A). The assessee in his submission, submitted that during the assessment, assessee filed details from-time-to-time. The assessee made cash deposit of Rs.10.75 lakh in old denomination in his bank account maintained with HDFC Bank during demonetization period. The assessee was having sufficient opening cash-in-hand since long. The assessee furnished

the cash income and cash expenses, in his hand in following manner:

| Asst.Year | Opening cash-in-hand | Cash income during the year | Cash withdrawal during the year | Closing cash-in-hand balance |
|-----------|----------------------|-----------------------------|---------------------------------|------------------------------|
| A.Y 14-15 | 4,92,185             | 2,10,388                    | 49,128                          | 6,53,445                     |
| A.Y 15-16 | 6,53,445             | 3,59,623                    | 63,396                          | 9,49,672                     |
| A.Y.16-17 | 9,49,672             | 4,02,830                    | 2,74,895                        | 10,77,607                    |
| A.Y 17-18 | 10,77,607            | 81,242 upto 18.11.2016      | 42,476 upto 18.11.2016          | 11,16,373 upto 18.11.2018    |

4. Cash On the basis of aforesaid details, the assessee submitted that he was having sufficient cash-in-hand on 18.11.2016 the assessee was having cash available of Rs. 11,16,373/-, out of which the assessee deposited Rs.10.75 lakh in his bank account on 23.11.2016. The assessee furnished capital account, balance-sheet, ITR, computation of income. To substantiate such claim, the assessee submitted that filing return of income for so many years, was having sufficient cash balance.

5. The ld CIT(A) after considering the submission of assessee held that during the appellate proceedings, assessee made more or less same submission that he was having sufficient opening & closing balances. The assessee has not explained as to how such cash balance generated to a salaried person and source of income is salaried and other sources. Entry in

the balance-sheet or capital account, has no meaning unless the source of cash substantiated. The assessee claimed cash-in-hand from financial year 2013-14 and suddenly deposited in November-December, 2016 after demonetization of currency note of Rs. 500 and Rs. 1,000/- respectively and upheld the action of Assessing Officer. Further aggrieved the assessee has filed present appeal before Tribunal.

6. I have heard the submissions of learned Authorized Representative (Ld.AR) for the assessee and learned Senior Departmental-Representative (Ld. Sr-DR) for the Revenue and perused the materials available on record and the orders of lower authorities carefully. The Ld. AR for the assessee submits that assessee submitted details of cash deposits in his bank account during the assessment as well as in First Appellate Proceedings. No contrary evidence was brought on record by Assessing Officer that such details available with assessee is not correct. The Ld. AR for the assessee submits that cash deposit in bank is supported by ITR filed by assessee for the last preceding four years. The Ld. AR for the assessee submits that assessee furnished the

cash book for his last four years including the assessment year under consideration along with balance-sheet, profit and loss account, capital account, ITR and computation income. The Ld. AR for the assessee submits that Assessing Officer has simply rejected the explanation of assessee by holding that no corroborative evidence to substantiate the claim with file. In fact, the assessee has given corroborative fact and the evidence in the form of profit and loss account, capital account and computation of income for the last four preceding years. The ld AR for the assessee further submits that before NFAC/Ld. CIT(A) the assessee again furnished the details showing opening cash-in-hand, cash income during the year and cash withdrawal and closing cash-in-hand. Such details were supported by the ITR filed for four preceding assessment years. On the basis of details furnished before NFAC/Ld. CIT(A), the assessee fully explained and demonstrated about of total cash deposit of Rs.10.75 lakh.

7. The ld AR for the assessee submits that assessee has shown cash income of Rs.2.10 lakhs. Rs. 3.59 Lakhs, Rs. 4.02 lakhs and Rs. 81,242/- for AY 2014-15 to 2017-18

respectively. The income of AY 2017-18 was considered upto date of cash deposits in bank on 18.11.2016, thus, the assessee substantiated total cash income of Rs. 10.54 Lakhs for past three years. The assessee has cash withdrawal of Rs. 49,128/-, Rs. 63,396/- Rs. 274,895/- (out of Rs. 274,895/- Rs.2,00,000/- was deposited in bank) and Rs. 42,476/- for 2014-15 to 2017-18 respectively. On the basis of aforesaid withdrawal, the ld AR for the assessee submits that a sum of Rs.6,24,188/- is fully explained and shown in the return of income much before demonetization period.

8. The Ld. AR for the assessee submits that Assessing Officer has not brought anything contrary to the submission and the ITR filed by the assessee. The remaining difference of Rs.4,50,812/- is out of opening cash balance as on 01.04.2013 and cash income of assessee for the period of 01.04.2016 to 18.11.2016 is only Rs. 81,242/-, which is duly shown in assessee's return of income and computation of total income.
9. For the year under consideration, the assessee has gross total income of Rs.5,88,074/-. The assessee claimed

deduction under Chapter-VIA of Rs.1,56,970/- and showed net income of Rs.4,29,104/- as net income which includes the cash income of Rs. 81,242/-. In the assessment order, the income of assessee was at Rs.4,29,104/- assessed as normal course of income. The cash income on current year at Rs. 81,242/- is also assessed as normal course of income and the same is also once again assessed as deemed income. Thus, same income has been taxed twice, which is not permissible in law. The cash deposit in bank out of cash income received by assessee from assessment years 2014-15 to 2016-17 were duly reflected in the return of income filed in due course and cannot be added as deemed income in the current year also. Such action of Assessing Officer is bad in law for the reasons, firstly, the income of earlier year cannot be taxed in the current year and secondly disclosed income in the returned income cannot be taxed in the current year, which is tantamount to double taxation of the same income neither in assessment order nor the appellate order spoke to anything about cash income declared in last four preceding assessment years. Thus, no addition can be

made for the income already declared in the returned income by assessee.

10. The Ld. AR for the assessee submits that lower authorities have not doubted cash deposit out with the income declared for the earlier preceding assessment years. The assessee furnished the cash book before the Assessing Officer and no defects were pointed out either in the returned income or cash book for the last four preceding assessment years. On the observation of Assessing Officer, that he is not in a position to ascertain whether any cash balance was available as on 01.04.2016 and 08.11.2016. The Ld. AR for the assessee submits that assessee has furnished opening balance, cash income of last four preceding assessment years and expenses made in such four preceding assessment years along with relevant evidence consisting profit and loss account and computation of income. Therefore, observation of Assessing Officer is wrong. Further cash withdrawal of Rs.2,74,895/- reflected in the cash book can be verified as withdrawal from HDFC Bank on 25.01.2016. Keeping in view of all evidence available on record, the estimation available only of Rs.1 lakh was not

justified. The Ld. AR for the assessee submits that assessee made cash deposit in one instance i.e. on 18.11.2016 consisting of Rs.500/- & Rs.1,000/- specified bank notes.

11. So far as opening balance of Rs.4,92,185/- the amount of Rs.6.24 lakh cash deposited in bank is represented the cash saving out of cash income for assessment years 2014-15 to 2017-18. The assessee made total cash deposit of Rs.10.75 lakh, which means balance amount of Rs.4.51 lakh only the deposit for opening balance. The assessee started filing of his return of income from the assessment year 2014-15 as in earlier year the income of assessee was below taxable level. The Ld. AR for the assessee submits that assessee belonged to a reputed family and his grandfather was an industrialist started in dyeing and printing mills and were selling various chemicals on large scale for which opening cash balance keeping in view the family background of Rs.4,92,185/- is not a large amount opening cash balance consists of personal savings, gifts received from his family members and relatives on various occasions and partly from the income earned in financial year 2013-14, which is below taxable limit. The Ld. AR for the assessee reiterates that

assessee has declared income of Rs.4,29,100/- and source of cash deposit is clearly source from normal cash deposit available in last preceding four years. The entire source of cash deposit was fully explained, thus, no addition under section 69A was justified.

12. On the other hand, Ld. Sr-DR for the Revenue, supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that assessee in his return of income has shown income from salary and other source of income, the books of account produced by assessee are not reliable. The entry in the books of account of assessee is not sacrosanct.
  
13. I have considered the rival submissions of both the parties and have gone through the order of lower authorities carefully. I find that Assessing Officer made the addition of Rs.9.75 lakh after giving the benefit of Rs. 1.00 lakhs as reasonable estimation of cash-in-hand. The Id CIT(A) also upheld the addition made by the assessing officer by holding that assessee made more or less same submission as made before assessing officer that he was having sufficient opening & closing balances. And that the assessee

has not explained as to how such cash balance generated to a salaried person and source of income is salaried and other sources. It was held that entry in the balance-sheet or capital account, has no meaning unless the source of cash substantiated. I find that the assessee is regularly filing his return of income for 2014-15 and is showing cash income in his return of income, copy of return of income, with computation of income is filed on record. In the computation of income, the assessee has clearly shown cash income of Rs.2.10 lakhs. Rs. 3.59 Lakhs, Rs. 4.02 lakhs and Rs. 81,242/- for AY 2014-15 to 2017-18 respectively. Further, I find that the assessee has shown withdrawal of Rs. 49,128/-, Rs. 63,396/- Rs. 274,895/- and Rs. 42,476/- for 2014-15 to 2017-18 respectively, out of which Rs. 2,00,000/- was claimed to be deposited. Thus, on the basis of above explanation, I find that the assessee has explained Rs.6,24,188/-, which were already shown in the return of income much before demonetization period. So far as remaining part of cash deposit of Rs. 4,51,000/- is concern, I find that cash deposit is clear from cash book, which shows the opening cash balance of Rs. 4.92 lakhs. The

assessing officer disputed the said figure of opening cash balance without verifying or cross checking from the entry in the capital account. The capital account and the computation of income for earlier years is not disputed by the assessing officer. The assessee is not showing meagre income in his return of income. In my considered view, once, the cash flow statement is not controverted by assessing officer as well as by Id CIT(A), which is based on the entry made in the cash book, then the source of cash deposit in the bank account cannot be brushed aside by the lower authorities. My view is also supported by the decision of division bench of Delhi Tribunal in Perminder Kaur Matharoo Vs ITO in ITA No. 840/Del/2021 (AY 2017-18) dated 15.11.2022 and Ahmedabad Tribunal in Kavtaben Chintanbhai Patel Vs ITO ITA No.306/Ahd/2021 (AY 2017-18) dated 03.08.2022. In view of the above factual discussion, I do not find merit in the addition made by assessing officer and sustained by Id CIT(A), and accordingly direct the assessing officer to delete the addition. In the result, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open court on 13/03/2023.

Sd/-  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत /Surat, Dated: 13/03/2023  
*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

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By order

Senior Private Secretary/ Private  
Secretary/Assistant Registrar, ITAT,  
Surat