

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.2211/MUM/2022 (A.Y: 2014-15)**

Prakash Mafatlal Joshi Room No. 10 Harbanshlal Molakram Chawl No.2 R.K. Singh Marg, Andheri (E) Mumbai - 400069  <b>PAN: AFEPJ3467M</b>	v.	CIT-(A) National Faceless Appeal Centre Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>None</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Saurabh Kumar Rai</b>
<b>Date of Hearing</b>	<b>:</b>	<b>11.01.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>01.03.2023</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 20.07.2022 for the A.Y.2014-15.

2. Brief facts of the case are, assessee filed its return of income for A.Y. 2014-15 on 06.03.2015 declaring total income at ₹.2,71,530/-. The case was selected for limited scrutiny under CASS and statutory notices u/s.143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response Authorised representative of the assessee attended and filed the relevant information as called for.

3. Assessee is engaged in the trading business of import licenses, derives income from bank interest and commission income. The Assessing Officer observed that as per the AIR information the assessee has made cash deposits in the bank as under: -

Sr. No.	Name of the bank and branch	Account holder	Account number	Type of account	Amount of cash deposit
1	Central Bank of India Andheri (East), Mumbai	Mr. Prakash Mafatlal Joshi and Mr. Bharti Prakash Joshi	1170315429	SB account Mode of operation: Any one or survivor	49,77,870/-
2	Abhyudaya Co-op Bank Ltd., Andheri, Mumbai	Mr. Prakash Mafatlal Joshi and Mr. Bharti Prakash Joshi	034011100001898	SB account, Mode of operation: E or S	16,21,000/-

4. During the course of assessment proceedings, assessee was asked to furnish source of cash deposits in the above two accounts with documentary evidence. In response, assessee has submitted that he

started a new trading business of import license and he purchased the DEPB import license from exporter and sold the same to importer. Since, this business is new to the assessee and the margin money of the profit was very low and he was not aware of any of the sale parties, therefore the assessee sold the same to the sale party in cash only. As submitted by the assessee, assessee has made cash deposits of ₹.49,77,870/- as a result of sale of the DEPB licenses and further made payment against the purchases by cheque or bank draft.

**5.** Assessing Officer observed that the assessee failed to furnish any documentary evidence regarding sales made during the F.Y. 2013-14 related to DEPB license. After considering the submissions of the assessee, Assessing Officer observed that assessee has made the deposits in the bank account which is out of cash sales, accordingly, he proceeded to estimate the income of the assessee @10% of the sale proceeds i.e. ₹.46,27,945/-.

**6.** With regard to other bank account, assessee has submitted that this account belongs to his wife Mrs. Bharti Prakash Joshi and his name was appearing only as a nominee. Assessee has also furnished the ITR of his wife for A.Y. 2014-15 along with income and expenditure accounts and

capital account. However, Assessing Officer observed that wife of the assessee has not shown any business income. He observed that it is a joint account and the pattern of the deposit also resembles in both the accounts. Therefore, he came to the conclusion that assessee is trying to hide his undisclosed cash credits by depositing in this account and he rejected the contention of the assessee, accordingly, invoked provisions of section 68 of the Act and made the addition of total deposits in this account of ₹.16,21,000/-. Further, Assessing Officer observed that assessee has submitted ₹.3,69,925/- as an opening cash in hand. However, he observed that assessee has not submitted any documentary evidences regarding the opening balance. Therefore, he made the addition of ₹.3,69,925/- u/s. 68 of the Act.

**7.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and after considering the submissions of the assessee, Ld.CIT(A) dismissed the appeal rejecting the submissions of the assessee.

**8.** Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

*"1) The learned Commissioner of Income tax (Appeals)-NFAC, Delhi failed to appreciate that the assessing officer erred in determining the total income of your appellant amounts to Rs.27,25,260/- instead of Rs. 2,71,530/-*

2) *The Commissioner of Income-tax (Appeals)-NFAC, Delhi failed to appreciate that the learned assessing officer has wrongly disallowed a sum of Rs. 4,62,795/- being 10% of sale proceeds of Rs. 46,27,945/- and considered as business income without considering the income already declared of Rs. 2,51,041/- on same income, hence addition should be Rs. 2,11,754/- (4,62,795-2,51,041). As per provision of section 44AD the taxable income should be 8% of the turnover and accordingly the profit should be 8% of Rs. 46,27,945/-i.e. Rs. 3,70,236/- less income already declared of Rs. 2,51,041/-, in result the addition should be Rs. 1,19,195/- (3,70,236-2,51,041).*

3) *The Commissioner of Income-tax (Appeals)-NFAC, Delhi failed to appreciate that the learned assessing officer has wrongly added a sum of Rs. 3,69,925/- being cash deposited in bank out of opening cash balance as on 01/04/2013.*

4) *The Commissioner of Income-tax (Appeals)-NFAC, Delhi failed to appreciate that the learned assessing officer has wrongly added a sum of Rs. 16,21,000/- being cash deposited in bank account of Mrs. Bharti Prakash Joshi, wife of your appellant. The bank account is in joint name of Mrs. Bharti Prakash Joshi with you appellant but for all practical purpose that account pertains to her namely Mrs. Bharti Prakash Joshi.*

5) *The learned assessing officer has wrongly charged interest U/s. 234 B of the Income-tax Act, 1961.*

6) *Your appellant reserves the right to add, amend delete or alter any or all the above ground of appeal each of which without prejudice to the order."*

**9.** At the outset, we observe that, in spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Therefore, we proceed to dispose of this appeal with the assistance of Ld.DR.

**10.** At the time of hearing, Ld. DR brought to our notice facts of the case, after considering the submissions of the Ld. DR and considering the

grounds of appeal raised by the assessee, we noticed that assessee has made a claim in grounds of appeal that assessee has made a cash deposits and the amount of cash deposited is within the limit of presumption tax u/s. 44AD of the Act. Therefore, the income has to be estimated @8% not @10%. In our considered view, the plea made by the assessee is justified, therefore we are inclined to direct the Assessing Officer to restrict the estimation @8% instead of 10%.

**11.** With regard to Ground No. 3, we observe that assessee has declared ₹.3,69,925/- as opening balance in his hands which Assessing Officer has made the addition as undisclosed credit in his hands. Since it is only an opening balance the Assessing Officer cannot treat this as income earned during the year. Therefore, we are inclined to allow the Ground No. 3 raised by the assessee.

**12.** With regard to Ground No. 4, assessee has submitted that, the cash deposited in the account of his wife in which assessee is only a joint account holder. We observe that Assessing Officer made the addition with the observation that the pattern of deposits are similar to the pattern in assessee's account. Assessing Officer cannot make addition on such open observation without there being cogent material on record. Therefore,

for the sake of overall justice, we are remitting this issue back to the file of the Assessing Officer to make the verification with the financials of the assessee's wife. After making proper verification as per law, the addition may be sustained after giving proper opportunity of being heard to the assessee. Accordingly, the ground raised by the assessee is allowed for statistical purpose.

**13.** In the result, appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 01<sup>st</sup> March, 2023

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 01/03/2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**