

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष(कोलकाता क्षेत्र)एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 478/Kol/2022
Assessment Year: 2017-18

Mohmmad Mukul (PAN: BGQPM 5502 C)	Vs.	ITO, Ward-3(2), Malda
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.01.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	27.03.2023
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate
For the Respondent/ राजस्व की ओर से	Shri P. P Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 30.07.2022 for the AY 2017-18.

2. Issue raised in ground no. 1 is general in nature and does not require any adjudication.

3. Issue raised in ground nos. 2 & 3 is against the confirmation of addition of Rs. 68,80,000/- by Ld. CIT(A) as made by the AO u/s 69A of the Act on account of cash deposited into bank account during demonetization period.

4. Facts in brief are that the assessee filed return of income on 31.03.2018 declaring total income of Rs. 4,91,650/-. The assessee is deriving income from retail business of trading in fish. The case of the assessee was selected for scrutiny. The statutory notices were duly issued and served on the assessee. The AO issued notice u/s 133(6) of the Act to the Axis Bank, Malda Branch to obtain bank statement and also details of specified bank notes deposited during the demonetization period. On the basis of information furnished by the bank, it was found that the assessee has deposited specified banking notes Rs. 500 and Rs. 1000/- during demonetization period details of which is extracted in Para 3.1 of the assessment order which aggregated to Rs. 68,80,000/- . The assessee submitted before the AO that he is a kaccha Aratia dealing in fish for more than 30 years and daily sale proceeds collected from different retailers/ wholesalers are deposited in cash in bank account after deduction of commission/payment of expenses and the same is transferred through RTGS to the respective suppliers. The assessee contended that all the deposits were made out of sales proceeds however the contention of the assessee did not find favour with the AO and he added the amount u/s 69A of the Act as unexplained money deposited in the bank account. Pertinent to note that during the year the assessee's turnover was Rs. 12,74,89,590/- out of which the assessee has disclosed gross turnover of Rs. 4,01,25,333/-. Even the AO treated the difference of Rs. 8,73,64,257/- as suppressed turnover and gross profit margin @ 7.96% was applied and thereby only addition of Rs. 69,54,195/- was made. So the fact remains that the assessee's turnover during the year was Rs. 12,74,89,590/-.

5. In the appellate proceedings, the Ld. CIT(A) confirmed the addition made u/s 69A of the Act amounting to Rs. 68,80,000/- simply on the ground that the assessee

could not furnish any details about source of money amounting to Rs. 68,80,000/- deposited in SBN of Rs. 1000/- and Rs. 500/-.

6. After hearing the rival submissions and perusing the material on record including the decision cited before us, the undisputed facts are that the assessee is dealing in fish on wholesale and retail basis on a very huge sale. We note that the AO has accepted turnover of the assessee at Rs. 12,74,89,590/- out of which the assessee has shown/undisclosed turnover to the extent of Rs. 4,01,25,333/- whereas the balance turnover not disclosed by the assessee to the tune of Rs. 8,73,64,257/- which was treated as undisclosed and suppressed turnover by the AO and he estimated the income by applying GP @ 7.96% on the said turnover thereby making an addition of Rs. 69,54,195/-. Now the issue is before us whether the cash deposited to the tune of Rs. 68,80,000/- by the assessee into his bank account on various dates commencing from 21.12.2016 to 28.11.2016 aggregating to Rs. 68,80,000/- as per details given by the AO in para 3.1 of the assessment order, can be reasonably said to be out of the turnover of the assessee. We have considered overall the facts of the case especially the quantum of turnover and the nature of business of the assessee and find that the cash deposited by the assessee cannot be doubted when the AO has himself accepted the total turnover of the assessee at Rs. 12,74,89,590/-. We further note that even if we consider the average monthly turnover of the assessee, it also comes to more than Rs. 1.00 crore per month. Therefore, the plea of the AO that this is the money deposited out of non-business sources and constitute undisclosed money is wrong and suffering from the vice of conjectures, surmises and presumptions. We further note that the assessment was framed in this case u/s 144 of the Act vide order dated 5.12.2019 despite the fact that the assessee has furnished all the information/details without rejecting the books of accounts of the assessee and the Ld. CIT(A) has affirmed the order of AO without giving any cogent reasons and findings on the issue. The assessee relied on the decision of Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT in [1959]37 ITR 288 (SC), decision of Hon'ble Patna High Court in the case of Lakshmi Rice Mill vs. CIT in [1974] 97 ITR 258 (Pat) and

decision of Co-ordinate Bench of Mumbai in the case of R.S. Diamond India (P) Ltd. vs. ACIT in ITA No. 2017/Mum/2021 for AY 2017-18 dated 26.07.2022. In all the above decisions, the common facts percolating are that the cash was deposited during demonetization period and the assessee explained the said cash to be out of the business transactions however the AO added the same u/s 69A of the Act as unexplained money deposited during demonetization period but the same was held to be not justified as the assessee has explained said cash to be out of business transactions. In the instant case, the gross turnover of assessee was Rs. 12,74,89,590/- and therefore the deposits of Rs. 68,80,000/- between 28.11.2016 and 21.12.2016 cannot be doubted as the assessee has sufficient turnover and cash sales which has been accepted by the AO. Under these circumstances, we set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition. The ground nos. 2 and 3 are allowed

7. The second issue raised by the assessee in ground no. 4 and 5 is against the confirmation of application of Gross profit @ 7.96% on the suppressed turnover of Rs. 8,73,64,257/- thereby upholding the AO on this issue whereas the profit shown by the assessee during the year is only 1.47%.

8. Facts qua the issue has been narrated in the foregoing paras. The limited issue before us is whether the profit to be applied on the fresh turnover would be 7.96% or lesser profit as claimed by the assessee. We have examined the audit report furnished by the assessee and found that NP has been disclosed at 1.47%. The assessee also relied on the various decisions to support his contention that the rate of profit as disclosed by the assessee in the audited annual accounts should be applied to the undisclosed/suppressed turnover. After considering the facts on record and order of authorities below we find that it would be reasonable if the rate of 2% is applied on the suppressed turnover of Rs. 8,73,64,257/- as the 7.96% is excessive and unreasonable. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to

apply rate of 2% of the suppressed turnover. Consequently the ground nos. 4 and 5 are partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 27th March, 2023

Sd/-
(Rajpal Yadav /राजपाल यादव)
Vice-President / उपाध्यक्ष

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 27th March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Mohammad Mukul, Puratuli Bandh Road, Barakarkhana, Englishbazar, Malda-732101
2. Respondent – ITO, Ward-3(2), Malda
3. Ld. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata