

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 393/Kol/2022**  
**Assessment Year: 2017-18**

<b>Kamalesh Bhattacharya</b> <b>11A, Paramhansa Deb Road</b> <b>P.O. Alipore</b> <b>Kolkata - 700027</b> <b>[PAN : AECPB8747D]</b>	Vs	<b>Income Tax Officer, Ward-22(3),</b> <b>Kolkata</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Miraj D. Shah, A/R
Revenue by :	Smt. Ranu Biswas, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 27/03/2023  
घोषणा की तारीख /Date of Pronouncement: 29/03/2023

**आदेश/ORDER**

**PER RAJESH KUMAR, ACCOUNTANT MEMBER :**

This is the appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the Ld. CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 31/05/2022 for the Assessment Year 2017-18.

2. The issue raised in Ground No. 1 is general in nature and requires no adjudication.

3. The issue raised in Ground No. 2 is against the confirmation of addition by Ld. CIT(A) as made by the Assessing Officer of Rs.49,79,500/-, u/s 69A of the Act on account of unexplained money being cash deposited in the bank during demonetisation period.

4. The facts in brief are that the assessee is an Advocate in practice. During the year, the assessee deposited a sum of Rs. 59,79,500/- cash during the demonetisation period. The details whereof is given at para 4 page 2 of

the assessment order. The assessee states that the said cash was received from eight clients for incurring various expenditure on their behalf which is an usual practice in the profession. The Assessing Officer issued notice u/s 133(6) to all these persons, however, only three persons replied. The assessee also states that, he received Rs.10,00,000/- from Mr. Susanta Bhowmick, as advance for purchase of land but the same was returned back subsequently. The assessee did not furnish any explanation or evidence to explain the said deposit of cash. Consequently the Assessing Officer after allowing a deduction of Rs.10,00,000/- which was claimed by the assessee being received in connection with advance for purchase of land.

4.1. During the first appellate proceedings, the Id. CIT(A) simply affirmed the order of the Assessing Officer.

6. Aggrieved the assessee is in appeal before this Tribunal.

7. After hearing rival contentions, we find that the issue needs to be examined at the level of the Assessing Officer as no evidence were examined by the either of the authorities below. We also direct the assessee to produce all these clients and furnish the necessary evidence which may be required by the Assessing Officer during the assessment proceedings. Accordingly, we restore the issue to the Assessing Officer for *de-novo* assessment, in accordance with law. Ground No. 2, raised by the assessee is allowed for statistical purposes.

8. The issue raised in Ground Nos. 3 & 4, is against the confirmation of addition of Rs.5,88,407/- as made by the Assessing Officer on account of difference in gross receipts as shown in the return of income and amount of income reflected in Form 26AS.

9. After hearing rival parties and perusing the material available on record, we observe that the issue has not been examined by the Assessing Officer in totality nor has it been explained by the assessee. Therefore, in the interest of justice and fairplay, we deem it fit to restore this issue back to the file of the Id. Assessing Officer to examine the issue afresh by providing adequate opportunity to the assessee of being heard. Accordingly, Ground Nos. 3 & 4 are allowed for statistical purposes.

10. The issue raised in Ground No. 5 is against the confirmation of addition of Rs.11,34,745/- as made by the Assessing Officer u/s 69C of the Act. The facts in brief are that the Assessing Officer observed from Form 26AS that the assessee deducted TCS of Rs.11,347/- on account of purchase of motorcar at Rs.11,34,745/-. The assessee was asked about the source of such expenditure. However, assessee failed to furnish anything.

12. Considering the rival contentions and the facts on record, we deem it fit to restore this issue to the file of the Assessing Officer for fresh adjudication and take a view after examining all the details already on record as well as the fresh evidence, if any, brought on record by the assessee. Accordingly, Ground No. 5 of the assessee is allowed for statistical purposes.

13. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 29<sup>th</sup> March, 2023 at Kolkata.

Sd/-

(SANJAY GARG)  
JUDICIAL MEMBER

Sd/-

(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Kolkata, Dated 29/03/2023

*\*SC S.P.*

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

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

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**