

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 99/Mum/2023  
(A.Y.2017-18)**

Mahavir Sampatraj Jain M/s Makker & Co. Shop No. 7B Shamji Morarji Bldg Champsi Bhimji Road, Mazgaon Mumbai – 400010	Vs.	ITO, Ward 20(2)(2) Piramal Chamber Lalbaug, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADPJ0382R		
Appellant	..	Respondent

Appellant by :	Amit Lad
Respondent by :	Bharat Andhale

Date of Hearing	13.03.2023
Date of Pronouncement	17.03.2023

आदेश / ORDER

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi dated 27.10.2021 for A.Y. 2017-18.

The assessee has raised the following grounds before us:

- “1. Sir, the assessment order passed by the assessing authority has been upheld by the commissioner of Income Tax Appeals (National Faceless Appeal Centre) with regards to the additions made of Rs.4,06,500/ (Four Lac Six Thousand Five Hundred only) made in law needs to be set aside
2. The additions upheld by the CIT Appeal) (NFAC), the appellate authority has not given any opportunity for hearing the said appeal, so putting forward our view or presentations, was denied The said allege additions made by the assessing authority were accepted and no hearing was given for any arguments, presentation Simply the order was passed and the appeal was dismissed.

3. *The Additions upheld by the CIT (Appeal) (NFAC) has no ground and is bad in law.*
4. *We had filed an appeal, but the Appellate Authority cannot locate the grounds of appeal submitted and has issued deficiency letter for submission of grounds of appeal but the letter does not state any timing about the hearing or any other submission from our side nor virtual hearing opportunity was provided to put forth our view point. The Appellate Authority has issued the deficiency letter on 17 February, 2021 and 22 September, 2021 asking for grounds of appeal as Hon'ble Commissioner (Appeal) cannot locate the said Grounds of Appeal appended and submitted otherwise the appeal will be rejected and never said or communicated about the hearing of appeal. the notice clearly state to submit grounds of appeal. After submission was made, the order was passed and the appeal was rejected, no opportunity was provided for hearing, which is bad in law. The Appellate Authority should have provided me with hearing opportunity to virtually present my case, such case cannot be finalized in this fashion. Sir, I have been unnecessary penalized by not giving me proper Opportunity and have been deprived of natural Justice*
5. *Sir, such sensitive case of demonetization requires the appellate authority to give patient video call hearing opportunity to me & my representative assessee, to present the case before him, however the same was denied which is bad in law and the same is against the law of natural justice. Sir, no Appeal proceeding were conducted and simple rejection order was passed.*
6. *Your Appellant craves leaves to add, amend, alter or / and delete any of the above Grounds of Appeal.”*

2. The fact in brief is that assessee's name appeared in the ITBA for issuing of notice u/s 142(1) for assessment year 2017-18 as it had deposited cash of Rs.71,06,220/- during the period of Demonetization. The assessee had not filed return of income u/s 139(1) of the Act, therefore notice u/s 142(1) of the Act was issued on 04.12.2017 and 10.03.2018. However, the assessee has not filed any return of income in response to the notice issued by the assessing officer. Therefore, case of the assessee was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 18.07.2018. During the course of reassessment the A.O has gathered information from Kotak Mahindra Bank and Sindhudurg Sahakari Bank by issuing of notices u/s 133(6) of the Act. However, assessee has filed its return on 28.11.2018 declaring total

income of Rs.3,10,650/-. With regard to the cash deposit of Rs.71,06,220/- the assessee has submitted as under:

- “9.1 With regard to cash deposited of Rs.71,06,220/- during the period of demonetization, the assessee vide letter dated 6 12.2019 has submitted that:-
- (a) Cash deposited during demonetization period of Rs. 13,21,200/- with account maintained with Sindhudurga Sahakari Bank Ltd. Out of said deposits, Rs.8,37,200/- are other notes and balance cash deposited of Rs.4,84,000/- are the cash received from the debtors.
  - (b) Cash deposited during demonetization period of Rs.7,84,760/- with account maintained with Kotak Mahindra Bank: Out of said deposits, Rs.3,17,000/- are other notes and balance cash deposited of Rs.4,67,760/- are the cash received from the debtors.
  - (c) The assessee submitted a letter dated 2.12.2019 received from Sindhudurga Sahakari Bank Ltd, wherein its stated that the account no. mentioned in the statement 1400 is a computer code for overdraft accounts and PAN No. AAAA5479E belongs to the bank. Thus the amount of Rs. 23,67,285/- shown in the respective column was not deposited by M/s. Sonu Marketing (Prop. Mahavir Jain) PAN No. AADPJ0382R.
  - (d) The assessee submitted a letter dated 3.12.2019 received from Sindhudurga Sahakari Bank Ltd, wherein the said bank has confirmed that M/s Madhu Enterprises maintaining overdraft A/c No. 118 and Mahavir Sampatraj Jain HUF Karta is operating this account. The PAN of HUF is AAFHM3277G. In view of this facts, the assessee has submitted the cash deposits during the demonetization period of Rs.26,32,975/- is not pertaining to him.
- 9.2 Further, assessee vide letter dated 10.12.2019 has submitted that cash deposited during demonetization period has been fully accounted and has been deposited from our cash sales as well as cash balance lying in our books of accounts. The assessee vide letter dated 20.12 2019 has submitted copy of agreement with Britania Industries with his proprietary business M/s. Sonu Marketing.”

However, A.O has not agreed with the submission of the assessee and treated the amount of Rs.4,06,000/- being the cash amount deposited after the date of demonetization in the aforesaid two bank account as unexplained cash credit u/s 68 of the Act r.w.s 115BBE of the Act and added to the total income of the assessee.

3. The assessee has filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that assessee has not filed any explanation regarding the source of cash deposited in the aforesaid bank accounts during the Demonetization period.

4. During the course of appellate proceedings before us the ld. Counsel contended that ld. CIT(A) has not given any opportunity for hearing the said appeal. He submitted that during the course of appellate proceedings the ld. CIT(A) has issued deficiency letter on 17.02.2021 and 22.09.2021 for removing the deficiency, however, the appeal was dismissed without giving any opportunity of hearing to the assessee.

On the other hand, the ld. D.R supported the order of CIT(A).

5. Heard both the sides and perused the material on record. The ld. CIT(A) has dismissed the appeal of the assessee reiterating the facts reported by the assessing officer. During the course of appellate proceedings the ld. CIT(A) has issued deficiency letter on 17.02.2021 and 22.09.2021 asking the assessee to file ground of appeals. In response to the same the assessee filed the ground of appeal and other necessary documents. However, the ld. Counsel submitted that thereafter the appeal was dismissed without giving any opportunity of being heard to the assessee by the ld. CIT(A). In this regard we find that ld. CIT(A) has not mentioned anywhere in his order that any opportunity of hearing was given to the assessee by issuing of any notice. Therefore, we consider it appropriate to restore this matter to the file of the ld. CIT(A) for deciding a fresh after affording due opportunity to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 17.03.2023

Sd/-

(Aby T Varkey)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 17.03.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.