

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” “A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.109/Bang/2023
Assessment Year: 2017-18

Ashwin G. Kalro 101, Embassy Palace Apartments No.16, Cunningham Road Bangalore 560 052  <b>PAN NO : ACUPA7563J</b>	<b>Vs.</b>	ITO Ward-1(2)(5) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Suman Lunkar, A.R.
<b>Respondent by</b>	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue

<b>Date of Hearing</b>	:	27.03.2023
<b>Date of Pronouncement</b>	:	18.04.2023

**O R D E R**

This appeal by the assessee is directed against order of the NFAC, Delhi dated 3.2.2023 for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:

1. *“The learned Commissioner of Income tax (Appeals) has erred in passing the, appellate order in the manner passed. The appellate order as passed is bad in law and is liable to be quashed.*

2. *In any case, the learned Commissioner of Income tax (Appeals) has erred in confirming the assessment order passed by the learned Assessing Officer. On the facts and circumstances of the case, the learned Commissioner of Income tax*

*(Appeals) should have quashed, the order passed by Assessing Officer or atleast should have deleted the additions made by the Assessing Officer.*

3. *In any case and without prejudice, the Assessing Officer had erred in adding the cash deposits made to the extent of Rs. 20,16,006/- as unexplained cash credit u/s 68 of the Act and the learned CIT(A) has erred in confirming the same. On proper appreciation of facts of the case and the law applicable, there being no unexplained cash credit at all, the provisions of section 68 of the Act are not applicable at all. The addition made being erroneous both on facts and law applicable is to be deleted.*

4.1 *The authorities below have erred in not appreciating the fact that*

*i) the source of cash deposits being repayment of loans given in the finance business of the appellant*

*ii) such loans were duly accounted in the books of the appellant and given through banking channels.*

*iii) the interest received on such loans were duly offered to tax in the year under consideration and erred in not considering the receipts of repayment of loans as source of cash deposits made on the ground that the appellant has not furnished the documentary evidences/confirmation letters with respect to loan creditors.*

4.2 *On the facts and circumstances of the case, the loans given were supported with confirmation letters and other documentary evidences, the addition as made/confirmed is to be deleted.*

5. *The learned Assessing officer has erred in levying taxes at special rates u/s 115BBE of the Act and the learned CIT(A) has erred in confirming the same. The levy of special rate of taxes being erroneous are to be rejected.*

6. *The Appellant denies the liability to pay interest u/s 234B of the Act. The interest having been levied erroneously is to be deleted.*

7. *In view of the above and other grounds to be adduced at the time of hearing it is requested that the impugned orders be quashed or at least addition made by treating the cash deposits made as unexplained cash credit u/s 68 of the Act be deleted. Levy of special rate of tax be deleted and the interest levied be also deleted.*

3. Further, assessee has raised additional evidences along with petition before us as follows:-

1. *For the year under consideration, an assessment order u/s. 143(3) of the Act was passed assessing the income of the petitioner at Rs. 30,39,156/- as against the returned income of Rs.10,23,150/-.*

2. *A sum of Rs. 20,16,006/- being cash received from various debtors which was deposited in bank during demonetization period has been added to income of the appellant u/s 68 of the Act.*
3. *In support of grounds of appeal raised, the appellant now would like to submit the following documents as additional evidences as same were not furnished before the authorities below.*
  - a. *Copy of Confirmation of accounts from the debtors for the period 01/04/2016 to 31/03/2017.*
  - b. *Copy of Court orders settling the cases filed with respect to two debtors. Ledger extract of 3 debtors from whom confirmation of accounts is not available alongwith relevant extract of Interest received therefrom.*
  - c. *The petitioner had furnished the information called for during the course of the assessment proceedings and had also filed written submissions in the course of appellate proceedings. However, the above confirmations and other supporting documents could not be filed either before the Assessing officer or CIT(A).*

*However, the above documents would support the case of the appellant before the honorable tribunal and therefore the same are submitted as additional evidences with a request that it may be admitted for furtherance of cause of justice.*

- d. *An affidavit to this effect is also enclosed.*
- e. *The prayer of the petitioner may kindly be acceded to.*

3.1 After hearing both the parties, in my opinion these additional evidences were not available to file before the AO/NFAC. In my opinion, the reason explained by the assessee for not filing these additional evidences before the lower authorities is justified. Accordingly, considering the plea of the assessee, admit the additional evidences for adjudication.

4. The facts of the case are that the assessee filed its return of income for assessment year 2017-18 on 24/07/2017 declaring total income of Rs.10,23,150/-. The case was selected for limited scrutiny for examination of the issue of "Cash deposited during the year". During the course of assessment proceedings, notices u/s 133(6) of the IT Act were issued to the banks for asking bank

account statements. The assessee has deposited cash of Rs. 43,34,705/- in his bank accounts during the year. Before AO the assessee explained the source of cash deposits as Rs.20,16,006/- received from various parties and balance amount as cash profit from race course, cash drawn from Banks, Savings and gifts. As the assessee failed to submit documentary evidence in support of Rs.20,16,006/- explained as receipt from various parties, AO added the same as cash credit u/s 68 of the Act. Being aggrieved by the said order passed by the AO, the assessee went in appeal before the NFAC who has confirmed the order of the AO. Aggrieved, now the assessee is in appeal before us.

6. I heard the rival submissions and perused the materials available on record. The breakup of additions of Rs.20,16,006/- is as follows:-

Firm	Amount (Rs.)
MAS Enterprises	567000
Venkateshwara Traders	10000
Akshar	200000
Vcreate Software Solution	200005.8
Sri Vinayaka Traders	240000
Advin Media Solutions	120000
Priya Handloom	205000
Indian Medical	224000
Millenium Synergy	20000
Ceramic Trading Co.	50000
<b>Total</b>	<b>2016006</b>

6.1 It was submitted by the assessee that above amount has been received on account of loan repayment. Before the lower authorities assessee has not filed all the details with regard to PAN, identity proof, mail ID and confirmation of the parties. According to the lower authorities, the assessee has not proved the identity, creditworthiness and capacity of the partners. Before me, the assessee has filed additional evidences as discussed above. In my opinion, these additional evidences goes to the root of the matter and

very important to decide the issue in dispute. Hence, in the interest of justice, I remit the entire issue in dispute to the file of AO to consider the additional evidences filed by the assessee before me and decide afresh. Further, I make it clear that the assessee is at liberty to place any further evidence before the AO to facilitate the issue in dispute.

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

Order pronounced in the open court on 18<sup>th</sup> Apr, 2023

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 18<sup>th</sup> Apr, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**