

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 489/MUM/2023
(Assessment Year: 2017-18)**

Arun Manohar Pathak,
Omkar Darshan, Masoli,
Dahanu Road, Taluka Dahanu
Distt. Palghar, Maharashtra - 401602
[PAN: ACMPP8442R]

..... **Appellant**

**The Assistant Commissioner of
Income-tax- Palghar Circle,**
Palghar Income-tax Officer,
Bidco Road Palghar,
Maharashtra - 401404

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Jignesh Shah
For the Respondent/Department : Shri Sridhar Govind Menon

Date : 18.05.2023
Conclusion of hearing : 24.05.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 12.12.2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 02.12.2019, passed under Section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:

"1 *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by the Assessing Officer ("AO") under section 69A of the Act in respect of the cash deposited in bank on various dates during the demonetization period (09.11.2016 to 31.12.2016) aggregating to Rs. 13,60,000 without appreciating the Appellant's submissions in right perspective, particularly that the Appellant being a milk supplier was exempt under the Government/RBI notification and as such the source of the cash deposits stood explained satisfactorily.*

The Appellant prays that the addition of the cash deposits aggregating to Rs. 13,60,000 be deleted.

2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the charging of tax at the flat rate of 60% under section 115BBE to the addition of the Rs. 13,60,000 as unexplained income of the Appellant under section 69A, as above.*

The Appellant prays that since the cash deposits were satisfactorily explained, the AO be directed not to apply the flat tax rate of 60% under section 115BBE.

3. *Consequential/other reliefs*

On the facts and in the circumstances of the case and in law, and in view of the reliefs prayed for hereinabove, the Appellant prays Your Honours to grant such other and/or further and/or consequential reliefs, including particularly deletion/recalculation of the interest charged under various provisions, as may be deemed fit and as per law."

3. The relevant facts in brief are that the case of the Appellant was taken up for assessment on the basis of AIMS Data in respect of cash deposits of Specified Bank Notes (**SBNs**) aggregating to INR.13,60,000/- in the bank account by the Appellant during the demonetization period (i.e., from 09.11.2016 to 30.12.2016) and failure of the Appellant to file return of income for the Assessment Year 2017-18. The Assessing Officer completed the Assessment under Section 144 of the Act vide order, dated 02.12.2019, holding

that the Appellant has failed to provide any documentary evidence to show that the cash deposited in the bank account by the Appellant was normal business income from sale of milk and that the Appellant was not permitted to receive SBNs and therefore, the cash deposited by the Appellant was nothing but Appellants own undisclosed income.

4. Being aggrieved, the Appellant preferred appeal before the CIT(A) and filed following documents/details and filed written submission dated 25.10.2021 and 2.11.2022. However, the CIT(A) was not convinced and therefore, dismissed the appeal vide order dated 12.12.2022 holding as under:

"5. I perused the grounds of appeal, order u/s.144, Appellant's submission and material available on record. My observations in respect of the grounds raised by the appellant are as follows:

6.1 The assessee deposited Cash of Rs. 13,60,000/- in his bank account during the demonetization period (9/11/2016 to 30/12/2016) in old currency notes (Rs.500/- and Rs. 1000/-) i.e specified bank notes. Assessee submitted that he is a retailer of milk and the said cash deposits of Rs. 13,60,000/- in SBNs were out of collection from sale of milk to persons during the demonetization period. However, assessee did not furnish any documentary evidences in support of this claim.

The assessee was not permitted to accept SBNs from any one during the demonetization period, Hence, the AO treated the cash deposited in The Dahanu Road Janata Co-op Bank Ltd amounting to Rs.13,60,000/- during the demonetization period in SBNs as unexplained and added u/s.69A r.w.s. 115BBE.

6.2 xx

6.3 In the written submission, the appellant stated that- (i) Assessee had license in Form C, from Government of Maharashtra bearing License No.11512018000623 dt.14/3/2012 for milk business. (ii) In the Exemption Notification dt.8/11/2016 in S.O. 3408(E) as per

Column (d), Ministry of Finance granted exemption for using Specified Bank Notes to purchase of milk. (iii) AO rejected the contention of the assessee being milk vendor stating that he is distributor/supplier of milk and not of retailer. (iv) Cash of Rs.13,60,000/- deposited into the bank was utilized for drawing demand draft in favour of M/s Gujarat Co-op Milk marketing Limited for purchase of milk.

6.4 Exemption Notification dt. 8/11/2016 in S.O. 3408(E) was given for the - convenience of Public in carrying out certain emergent and urgent transactions using the specified notes.

Column (d) of notification reads for purchase at milk booths operating under authorisation of Central or State Governments.

The assessee does not come under Milk Booths operating under authorisation of Central or State Governments. Moreover assessee did not bring any material on record to establish that he comes under Milk Booths operating under authorisation of Central or State Governments.

Hence, the addition of Rs.13,60,000/- u/s.69A r.w.s. 115BBE towards unexplained cash deposited in the bank account during the demonetization period in SBNs is upheld.

7. In result, this appeal of the assessee is dismissed.” (Emphasis Supplied)

5. The Appellant is now in appeal before the Tribunal against the above order passed by the CIT(A).
6. We have heard the rival submissions. The Ld. Authorised Representative for the Appellant pleaded that the Assessee was carrying on milk distribution business, the cash deposits in the bank account were received from sale of milk and the same has been used to make payment towards purchase of milk to Gujarat Co-operative Milk Marketing Ltd. (GCMM) by way of demand drafts as reflected in the bank statement of the Appellant. On the other hand,

the Learned Departmental Representative supported the order passed by the CIT(A) and placed reliance of the order passed by the Assessing Officer and CIT(A). On perusal of the material on record, we find that the Appellant has placed on record all the documents filed before CIT(A) which support the averments made on behalf of the Appellant before the CIT(A). Copy of License No. 11512018000623 issued by Government of Maharashtra (placed at Page 9 of the paper-book) shows that the Appellant has been in the dairy business since 1992 and holds state license for dairy business as "*Distributor/Supplier (milk)*". The cash book and bank statement of the Appellant for the relevant financial year and the Ledger Account of purchases made from GCOMM show that the Appellant had deposited cash from sale of milk in the bank account which was used to make payments for purchase of milk from GCOMM. Thus, in our view by furnishing the aforesaid documents/details the Appellant was able to substantiate the stand during the assessment proceedings and shift the burden of proof on the Revenue. However, the CIT(A) did not deal with documents/details furnished by the Appellant and failed to either carry out any inquiry/verification into purchase/sale of milk by the Appellant to controvert the averments made by the Appellant, or to point out any infirmity in the aforesaid documents/details. The CIT(A) dismissed the appeal by simply stating that the Appellant has not been able to show that the Appellant is entitled to claim benefit of Notification No. S.O. 3408(E), issued by Ministry of Finance (Department of Economic Affairs), dated 08.11.2016 as the Appellant has not filed any material to establish that the Appellant qualify as a milk booth operating under authorization of Central or State Government. In our view, the approach adopted by the CIT(A) cannot be

countenanced. In paragraph 4.2 of the order impugned, the CIT(A) has recorded that the Appellant had filed the following documents vide submission dated 22.11.2022:

- (a) Copy of License issued by the State of Maharashtra to show that Appellant was authorized to distribute/supply milk along with copy of Notification No. S.O. 3408(E), issued by Ministry of Finance (Department of Economic Affairs), dated 08.11.2016
- (b) Copy of computation of Income, Profit and Loss Account, Capital Account and Balance Sheet for Assessment Year 2017-18.
- (c) Ledger copy of Cash Book for the period 01.04.2016 to 31.03.2017.
- (d) Ledger Extract of Bank Book & Bank Statement of Bank of Baroda A/c. No. 1972 for the period 01.04.2016 to 31.03.2017.
- (e) Ledger Extract of Bank Book & Bank Statement of Canara Bank A/c. No. 4644678000084 for the period 01.04.2016 to 31.03.2017.
- (f) Ledger Extract of Bank Book & Bank Statement of Janta cooperative Bank A/c. No. CC/951 for the period 01.04.2016 to 31.03.2017.
- (g) Ledger Extract of purchase account for the period 01.04.2016 to 31.03.2017.
- (h) Ledger Extract of M/s Gujarat Cooperative Milk Marketing Ltd. for the period of 01.04.2016 to 31.03.2017.

7. The Notification No. S.O. 3408(E), provided that SBNs would continue to be legal tender for purchase of milk at GCMM. Thus, in our view, the Assessing Officer as well as CIT(A) were incorrect in holding that the Appellant was not covered by the notification. Even if for the sake of arguments it is believed that that though the

Appellant was not covered by the aforesaid Notification, the Appellant had a bonafide belief that the Appellant was entitled to the benefit of the Notification and therefore, permitted to receive SBNs, and that the Appellant did accept SBNs as valid tender. The Appellant had provided explanation about the source and nature of the cash deposited in the bank account as cash received from sale of milk in the normal course of business. The explanation furnished by the Appellant was rejected by the Assessing Officer and CIT(A) by merely holding that the Appellant could not have received SBNs as legal tender and therefore, cash deposited by the Appellant was undisclosed income without verifying the documents and testing the explanation offered by the Appellant by examining the actual purchase/sale of milk. Thus, the averments made by the Appellant, which in our view are supported by the documents furnished, went uncontroverted. Accordingly, in the facts and circumstances of the present case, the addition of INR 13,60,000/- made by the Assessing Officer under Section 69A of the Act is deleted.

8. In result, the present appeal preferred by the Appellant is allowed.

Order pronounced on 24.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.05.2023
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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