

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.697/Del/2022
(ASSESSMENT YEAR 2017-18)**

Anand Kumar Jain H-1/81-82 3 rd Floor, Sector-16 Rohini Delhi-110 085 PAN-AFBPJ 2621J (Appellant)	Vs.	Income Tax Officer Ward-36(1) NFAC New Delhi-110 002 (Respondent)
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Appellant by	Ms. Pooja Bansal, CA & Mr. Mohit Bansal, CA
Respondent by	Mr. Kanv Bali, SR-DR

Date of Hearing	11/07/2023
Date of Pronouncement	13/07/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 25/03/2022 for Assessment Year 2017-18. Grounds taken in this appeal are as under:

- *That the Learned AO erred on facts and circumstances of the case and in Law in making the addition of Rs.2,01,08,000 on account of unexplained money of the assessee (regarding which the CIT-A has also not provided any relief and has upheld the said addition made in the impugned assessment), which the assessee is appealing against, as the same has adversely dented assessee's financial position by Rs. 2 Crores (approx.).*
- *The Assessee is a small scale businessmen doing trading of joona and building material. Also the assessee is properly disclosing all his trading receipts to both income tax department as well as DVAT department and the most astonishing fact is that entire credits to the bank account is taken into consideration to belie the assessee that he has not disclosed his receipts properly. CAN THE ENTIRE CREDITS TO BANK ACCOUNT BE THE INCOME OF THE ASSESSEE? THERE IS NO BUSINESS ON THE PLANET THAT CAN GIVE SUCH RETURNS.*
- *That the Learned AO erred on facts and circumstances of the case and in Law in imposing penalty proceedings u/s 271AAC. There is no mens rea on part of the assessee as he provided all the available documents to make every possible compliance on his hand on receipt of the said notices.*
- *That the Learned AQ erred on facts and circumstances of the case and in Law in imposing penalty proceedings u/s 271AAC by making additions u/s 69A of the Act, as there was no unexplained money hence this penalty is non imposable on the assessee. The addition made by the AO is unreasonable and unjustified after considering all the facts and circumstances.*
- *That without prejudice in any view of the matter, said addition is totally unwarranted. Kindly stay the demand, till pendency of appeal. That the assessee craves leave to add/ alter any of the grounds of appeal on or before the date of hearing.*
- *That without prejudice in any view of the matter, said addition is totally unwarranted. Kindly stay the demand, till pendency of appeal. That the assessee craves leave to add/ alter any of the grounds of appeal on or before the date of hearing.*

2. The brief facts of the case are that the assessee is an individual, engaged in the business of trading of joona and building materials. The assessee filed his return of income declaring total income of Rs.3,70,510/-. The case was selected for 'Limited Scrutiny' under CASS. It was observed by the Assessing Officer that the assessee had made cash deposits of Rs.2,01,08,000/- in his bank account maintained in Canara Bank and same has been treated as the income of the assessee u/s 69A of the IT Act and the assessment proceedings are completed by making addition of Rs.2,01,08,000/-. Aggrieved by the assessment order dated 24/12/2019, assessee preferred an appeal before the Ld. CIT(A), the Ld. CIT(A) vide order dated 25/03/2022 dismissed the appeal filed by the assessee.

3. As against the order dated 25/03/2022 passed by the Ld. CIT(A), the assessee filed the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee vehemently submitted that out of the total cash deposit of Rs.2,01,08,000/-, only a sum of Rs.6,00,000/- has been deposited during the demonetization, by drawing our attention to the statement of account produced in the paper book, submitted that the cash deposits are proceeds of the business, thus the entire sum cannot be concluded as income of the assessee. Further submitted that the sales have not been affected by the A.O., therefore, the lower authorities have committed error making addition by invoking section 69 of the Act. The Ld. Counsel for the assessee submitted that the order impugned of the authorities are erroneous and deserves to be set aside.

5. Per contra, the Ld. Department Representative ("DR" for short) submitted that the assessee failed to appear before the Ld. CIT(A), even before the Assessing Officer, the A.O. had asked to furnish the details of sales and purchase made during the year, but the assessee has not provided the details; therefore, the Assessing Officer rightly completed the assessment proceedings by making

addition of Rs.2,01,08,000/-, therefore, submitted that the order of the lower authorities required no interference.

6. We have heard both the parties and perused the material available on record. It is specific case of the assessee that only sum of Rs.16 lacs has been deposited during the demonetization period and rest of amount has been deposited during the period of demonetization, further the cash deposits are the proceeds of the business hence, the entire amount cannot be treated as income. It is found that the assessee had not appeared before the Ld. CIT(A) and not produced the details of sales and purchase made during the year before the AO.

7. Considering the above facts and circumstances and with the consent of both the parties, the issues involved in the present appeal are remanded to the file of the Ld. AO for *de novo* adjudication and the AO is directed to decide the issue afresh in accordance with law, after providing reasonable opportunity to the assessee.

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

Order pronounced in open Court on 13th July, 2023

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 13/07/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI