

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT
BEFORE DR. A. L. SAINI, AM

आयकर अपीलसं./ITA No.472/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2017-18)

(Physical Court Hearing)

The Sagbara Dediapada Vibhag Adivasi Mahila Vikash Bachat & Dhiran Sahkari Mandali Ltd. Pandorimata Society Nr. Court, Chikda Road, Taluka: Dediapda, Dist. Narmada-393040	Vs.	Income Tax Officer, Ward-2(5), Vharuch, Income Tax Office, Harikunj, Station Road, Bharuch-356 069
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADAT 6688 F		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri Rajesh Upadhyay, AR
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाईकीतारीख/Date of Hearing	06/09/2023
घोषणाकीतारीख/Date of Pronouncement	12/10/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the National Faceless Appeal Centre, Delhi (in short "NFAC/ld. CIT(A)"], dated 30.06.2023, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3)/144 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 27.11.2019.

2. Grounds of appeal raised by the assessee are as follows:

"1. Ld. CIT[A], NFAC, has erred in law and on facts to confirm Assessing Officer's assessment u/s 144 ignoring the fact that he has not provided adequate opportunity of being heard prior to finalise assessment u/s 144 on 27.11.2019, though the limitation period expired on 31.12.2019.

2. Ld. CIT(A). NFAC, has erred in law and on facts to confirm AO's addition u/s 69A of the Act for Rs.41,31,910/- ignoring the fact that the assessee is a

registered co.op. society, maintaining books of accounts, books are audited in which entire amount of cash deposits in banks are reflected along with its source. He further ignored the fact that the AO has charged tax at maximum rate as per 115BBE of the Act up on the Co-op. Society who is working in remote tribal area for upliftment of aadiwashi women.

3. Ld. CIT(A), NFAC has erred in law and on fact to confirm Assessing Officer's action to non-service of notices u/s 142(1) of the Act upon the assessee as per the requirement of the law. Even a service of show cause notice was upheld though it was served after the date of hearing fixed by the AO.

4. Ld. CIT(A), NFAC has erred in law and on fact to give only six days' time with respect to assessee's adjournment petition dated 15/06/2023 through which adjournment was sought for a month"

3. The facts of the case which can be stated quite shortly are as follows: The assessee before us is a co-operative society consisting Tribal/village women. As per information available with Assessing Officer, *i.e.* AIMS module of ITBA, it was noticed by the assessing officer that assessee-trust has deposited cash of Rs.41,31,910/- in its two bank accounts maintained with Dena Bank and Bharuch DCCB Bank, during the demonetization period *i.e.*, 09.11.2016 to 31.12.2016. Further on verification of e-filing portal, it was noted by the Assessing Officer that assessee-trust has not filed the return of income for assessment year (A.Y.) 2017-18. Since the assessee has failed to furnish a return of income for the year under consideration within the time limit prescribed u/s 139 of the Act, therefore a notice u/s 142(1) of the Act was issued to assessee on 21.12.2017 requesting the assessee to furnish return of income for A.Y 2017-18.

4. In order to verify the transactions reported in ITBA, information u/s 133(6) of the Act, was called for from the respective banks during the course of assessment proceedings, requiring them to submit bank statement for the year under consideration along with all KYC documents. On verification of the bank statement, it was noticed by the Assessing Officer that apart from the cash deposited during the demonetization period, there

are huge credits appearing in the bank accounts of the assessee. The total credits appearing in the various bank accounts of the assessee, during the financial year (F.Y.) 2016-17 is summarized as under:

Name of the bank	Account No.	Cash deposited during demonetization period	Cash deposited other than demonetization period during the year	Other credits by way of transfer and clearing
Dena Bank	0302100545507	25,58,740	3,22,700	17,34,460
Bharuch DCCB	611010071779	15,73,170	26,76,500	0
Total		41,31,910	29,99,200	17,34,460

As the assessee has not responded to the notices issued, therefore a show cause notice for finalizing the assessment was issued on 27.09.2019. Thereafter a final show cause notice on 06.11.2019 was issued by Assessing Officer which is reproduced in the assessment order, vide page No. 2 to 4.

5. In response to the above show cause notice of Assessing Officer, the assessee submitted its reply with following documents and evidences:

“This Co-operative society is established on 16 August 2011. The Reg. number is NMD/S 39996. The members of this society are inclusively of Tribal women. This society is consisted of two Talukas namely Sagbara and Dediapada. In Dediapada Taluka there are 108 villages and in Sagbara there are 32 villages are the beneficiaries of this society. In total there are 140 villages. This society was registered in 2011 with 1100 women. Today it has 3150 women. Most of the women are illiterate. Each member has taken share according to their capacity as Rs.100/- to Rs.500/- For the better functioning of the society there is a committee which consist of 15 members who are well trained in the matter. Evey month the committee meets. There are two staffs in the office who are well trained in computer.

The various activities of this society:

There is regular savings by each member and record is maintained individually by saving pass book. Group-operative Society. There the savings register is maintained. This amount is deposited in the bank. From this savings when the women need money; they are able to take loan. The loan is used for various purposes like education, health, agriculture, purchase of seeds, for any income generation activity etc., the women return the loan with 12% interest. They are given dividend fund annually during the Annual General Meeting of every year. These women are provided many trainings such as for agriculture, stitching, legal gaining, kitchen garden etc. From every group the President and

Secretary come together and are given various training, other awareness classes for health, cleanliness, protecting the forest etc., The leaders of the group share their knowledge with the other group members. Women are given guidance and help in their various problems. For any personal problems and difficulties the women approach the co-operative for assistance.

Financial management is carried out by the Secretary of the Society. Deposits withdrawals, giving of loans, taking back the loan, calculating the interest etc. The share is deposited in the District Co-Operative Bank. Other cash is deposited in the Dena Bank.”

6. During the assessment proceedings, the assessee has also filed copy of PAN card, copy of bank account first page (BDCC Bank & Dena Bank), certificate of incorporation, audit report for assessment year (A.Y.) 2017-18, member list in Mandli etc. The assessee has explained the source of cash deposited during the year including that of demonetization period through its submission that the same was amount collected/received from its members. The assessee in its submission stated that this Mandali has 3150 women members and each member has taken share of Rs.100/- to Rs.500/- according to their capacity. Thereafter, these savings are collected by the President and Secretary. The amount so collected is deposited in the Bank Account. The assessee (Mandli) provide loan facilities to its members @ 12% and the dividend is distributed to its member annually during the Annual General Meeting of every year.

7. However, Assessing Office rejected the contention of the assessee and observed that the assessee has not explained cash deposited during demonetization. The assessing officer noted that the assessee simply stated that savings collected from its members has been deposited in bank account by the Secretary of the society during the year under consideration. Secondly, assessee has not submitted any confirmation from any members of Mandali, who had given cash to the assessee for depositing during the demonetization period. On verification of bank statement of the assessee, it

came to notice of the Assessing Officer that cash deposited during demonetization period *i.e.* 08.11.2016 to 31.12.2016 (54 days) comes to Rs.41,31,910/-. Whereas cash deposited other than demonetization period during the year *i.e.* 311 days comes to Rs.29,99,200/- only which is also not justified. In view of the above facts, the explanation offered by the assessee about of the source of cash deposited in its bank account during the demonetization period, was not acceptable to Assessing Officer. Therefore, the sum of Rs.41,31,910/- credited into the assessee's above mentioned bank account during the demonetization period was treated as unexplained money u/s 69A of the Act, and accordingly added to the total income of the assessee. The Assessing Officer also stated that since the addition has been made u/s 69A of the Act, the tax payable on this addition is u/s 115BBE of the Act.

8. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld. CIT(A), who has confirmed the action of Assessing Officer. The Id CIT(A) noted that during the assessment proceedings, the assessee has failed to produce the documentary evidence/source of cash deposit. Therefore, Id CIT(A) reiterated the findings of the assessing officer and confirmed the addition made by the assessing officer. Aggrieved by the order of NFAC/Ld. CIT(A), the assessee is in further appeal before this Tribunal.

9. Shri Rajesh Upadhyay, Learned Counsel for the assessee submitted before the Bench, the following documents and evidences, which were already filed before the Assessing Officer viz., (i) Computation of income for A.Y 2017-18 (pages 35-36 of paper book) (ii) Copy of bank statement of Dena Bank (pages 37-43 of paper book) (iii) Copy of bank statement of Bharuch DCCB (pages 44 to 48 of paper book). The Ld. Counsel

submitted that assessee-trust is for the benefit of Tribal Adivasi women and assessee-trust consisted of two Talukas in the backward villages and there is a continuous receipts and payments amongst the Adivasi women. After getting subscription from Tribal Adivasi women, the assessee-trust provides money to the needy women @ 12% interest. The bank statement and other documents were on the record of Assessing Officer and Assessing Officer did not make addition in respect of cash deposits of Rs.29,99,200/- and cash deposits to the tune of Rs.13,34,460/-, however the character of the cash deposits were same and the Assessing Officer made addition to the tune of Rs.41,31,910/-, which was deposited out of the subscription money received from the Adivasi women and therefore said addition should be deleted. The Ld. Counsel submitted that money which was deposited in the bank accounts, were duly recorded in assessee's books of accounts and books of accounts were audited, therefore genuineness of the transaction should not be doubted. Therefore, any amount of money which is recorded in the books of accounts, the addition cannot be made u/s 69A of the Act, when the amount has been recorded in the books of account and assessee filed the valid explanation before Assessing Officer, then in that situation no addition u/s 69A of the Act may be made.

10. On the other hand, Ld. Sr.DR for the Revenue argued that assessee has not produced the list of Members from whom assessee has received Rs.41,31,910/- and audit report of assessee-trust contains some mistakes, therefore audit report should not be relied upon. Therefore Ld. Sr-DR submitted that the mater may be remitted back to the file of Assessing Officer for afresh adjudication.

11. I have heard both the sides and gone through the relevant material on record. It is seen that the assessment in this case was completed u/s.144 of the Act, despite of the fact that during the assessment proceedings, the assessee has submitted written submission and documents and evidences. During the assessment stage, the assessee has submitted following documents and evidences, viz: (i) Copy of PAN card, (ii) Copy of bank account, (iii) Copy of first page (BDCC Bank & Dena Bank account), (iv) Certificate of incorporation, (v) Audit report for assessment year (A.Y.) 2017-18, (v) Members list in Mandli and written submission to explain the source of cash deposited during the year. I note that Assessing Officer has not made addition in respect of cash deposited during the year other than demonetization period. As per bank statements of the assessee, the position of cash deposited by the assessee are summarized below:

1. Cash deposited in demonetization period Rs. 41,31,910/-
2. Cash deposited other than demonetization period Rs. 29,99,200/-.
3. Other credit by way of transfer and clearing Rs. 17,34,460/-

As per respective bank statements, the cash deposit during the year is as under:

<i>Sr.No</i>	<i>Bank name/Branch</i>	<i>Account No.</i>	<i>Cash deposited in demonetization period</i>	<i>Cash deposited other than demonetization period during the year</i>	<i>Other credit by way of transfer and clearing.</i>
<i>1</i>	<i>Dena Bank</i>	<i>030210054507</i>	<i>25,58,740</i>	<i>3,22,700</i>	<i>17,34,460</i>
<i>2</i>	<i>Bharuch DCCB</i>	<i>611010071779</i>	<i>15,73,170</i>	<i>26,76,500</i>	<i>0</i>
		<i>Total</i>	<i>41,31,910</i>	<i>29,99,200</i>	<i>17,34,460</i>

12. I find that during the assessment proceedings, the assessee has given satisfactory explanation of cash deposited of Rs.41,31,910/- during the demonetization period, by submitting Copy of PAN card, Copy of bank account, Copy of first page (BDCC Bank & Dena Bank account),

Certificate of incorporation, Audit report for A.Y. 2017-18, Members list in Mandli and written submission to explain the source of the source.

13. I note that Assessing Officer has not made addition in respect of cash deposit other than demonetization period to the tune of Rs.29,99,200/- Thus, assessing officer has treated the said cash deposit of Rs.29,99,200/-, as genuine money of the assessee-trust. The Assessing Officer also did not make addition in respect of other credit by way of transfer and clearing of Rs.17,34,460/-. Therefore, it is abundantly clear that total cash and other credit to the tune of Rs.47,33,660/- (Rs.29,99,200 + Rs.17,34,460) received by the assessee-trust from its members by way of donation/subscription, have been considered by the Assessing Officer, as if it is genuine subscription/donation. However, the subscription/donation to the tune of Rs.41,31,910/- was considered by the Assessing Officer, as if, it is not genuine. Therefore, Assessing Officer has considered a part of cash deposit as undisputable and another part of cash deposit as disputable, which is not acceptable. The Assessing Officer has not bring any cogent evidence on record to say that the subscription/donation to the tune of Rs.41,31,910/- is disputable.

14. I find that during the appellate proceedings, the Id CIT(A) stated that assessee has not explained the sources of cash deposit of Rs.29,99,200/-. However, Id CIT(A) has failed to enhance the assessment. I note that during the assessment stage, the assessee has submitted enough documents and evidences to prove the cash deposit, such as, Copy of PAN, Copy of bank account, Copy of first page (BDCC Bank & Dena Bank account), Certificate of incorporation, Audit report for A.Y. 2017-18, Members list in Mandli and written submission to explain the source of the source. The Assessing Officer did not find any fault in these documents and evidences

so submitted by the assessee, except to say that explanation of the assessee is not acceptable. I note that Assessing Officer has not refuted or discredited these evidences and documents. The Assessing Officer does not mention why he is not accepting these evidences. On the contrary, the Assessing Officer has just brushed aside these evidences without even a word on why they are not acceptable. It is a well settled Law that when an assessee has all the possible evidence in support of its claim, they cannot be brushed aside based on surmises.

15. I note that assessee -trust has received subscription/donation to the tune of Rs.41,31,910/- and the same was amount collected/received from its members. The Id Counsel stated that this Mandali has 3150 women members and each member has taken share of Rs.100/- to Rs.500/- according to their capacity. Thereafter, these savings are collected by the President and Secretary. The amount so collected is deposited in the Bank Account. The assessee (Mandli) provide loan facilities to its members @ 12% and the dividend is distributed to its member annually during the Annual General Meeting of every year. Therefore, based on these facts and circumstances, I delete the addition.

16 In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 12/10/2023 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत / Surat दिनांक/ Date: 12/10/2022
DKP (Sr. PS Outsourcing)

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat