

IN THE INCOME TAX APPELLATE TRIBUNAL
Circuit Bench, Varanasi

Before Shri B.R. Baskaran (AM) & Shri Amit Shukla (JM)

I.T.A. No. 36/VNS/2023 (A.Y. 2017-18)

Mr. Phool Chand Choudhary Fruit Suppliers Ranipur, Post Narayanpur Narayanpur Bazar, Bakhira Mehdawat, Sant Karbir Nagar, UP-272 270. PAN : AOIPC5474 (Appellant)	Vs.	ITO Basti-New (Respondent)
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Assessee by	Shri S.K. Garg
Department by	Shri A.K. Singh
Date of Hearing	27.09.2023
Date of Pronouncement	09.11.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 21.2.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2017-18. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the additions made by the Assessing Officer.

2. Facts relating to the case are stated in brief. The assessee is fruit merchant. Learned AR submitted that the level of activity of the assessee is small. During the demonetization period the assessee had deposited Rs.10.60 lakhs into his bank account. It was noticed that the assessee has not filed return of income for A.Y. 2017-18, i.e. for the period during which the above said deposits were made. Hence, the Assessing Officer reopened the

assessment by issuing notice under section 148 of the Act. The assessee did not respond to the notices issued by the Assessing Officer.

3. From the bank account details, the Assessing Officer noticed that the assessee has made aggregate deposits of Rs.50,90,986/- including deposits made during the demonetization period, referred above. The Assessing Officer noticed that the average amount of deposits made into the bank account works out to Rs.4,23,196/- per month. Since the demonitisation period was existing for two months, the AO took the view that the deposits to the extent of two months of average deposit amounting to Rs.8,46,392/- may be treated as explained. Accordingly, the AO took the view that the excess amount of deposit of Rs. 2,13,608/- (10,60,000 – 8,46,392) should be treated as unexplained. Accordingly, the AO assessed the above said amount of Rs.2,13,608/- as unexplained income of the assessee under section 69A of the Act.

4. In respect of balance deposits amounting to Rs.48,77,378/-, the Assessing Officer accepted as business receipts and estimated the business income @ 8%, which worked out to Rs. 3,90,190/-. Accordingly, the Assessing Officer determined the total income of the assessee at Rs.6,08,800/-, being aggregate of both the amounts referred above. The learned CIT(A) confirmed the same and hence the assessee has filed this appeal before the Tribunal.

5. We heard the parties and perused the record. We noticed that the Assessing Officer has added Rs. 2,13,608/- as unexplained money under section 69A of the Act. We noticed earlier that the Assessing Officer has worked out the above said figure by making some computation. The fact remains that the assessee has made cash deposits of Rs. 10,60,000/-. It is also an admitted fact that the assessee has been carrying on fruit business

on a small scale. Further the Assessing Officer has estimated income on remaining amount of deposits. All these facts go to show that the deposits made into the bank account represents business receipts of the assessee. Provisions of section 69A of the Act, in our view, would come into operation only if sources of cash deposits to the bank account are not explained. When the Assessing Officer himself has come to the conclusion that the deposits made into the bank account represents receipts, then there is no scope for invoking provisions of section 69A of the Act. In this view of the matter, addition of Rs.2,13,608/- made by the Assessing Officer under section 69A of the Act by making his estimation is not justified. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs. 2,13,608/- made by the Assessing Officer under section 69A of the Act.

4. Next issue relates to estimation of profit. We noticed that the Assessing Officer has estimated the profit @ 8%. Learned AR submitted that the assessee is a fruit merchant and the fruits are perishable commodities. He submitted that the average profit earned by the assessee normally works out to 5% only.

5. Learned DR, on the contrary, supported the order passed by the learned CIT(A).

6. We heard the rival contention on this issue and perused the record. We noticed that the profit has been estimated by the Assessing Officer @ 8% at Rs. 48,77,378/-. In the earlier paragraph we have held that the entire deposits of Rs. 50,90,986/- represent business receipts of the assessee. Accordingly we are of the view that the income has to be estimated on the above said amount of Rs. 50,90,986/-. Considering the rival claim of the parties, we are of the view that the profit may be estimated @ 6% of the total

deposits made by the assessee into the bank accounts and the same will put this issue at rest. Accordingly we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to estimate income @ 6% of the total deposits made by the assessee.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on 09.11.2023.

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Varanasi.; Dated : 09/11/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Varanasi.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Varanasi

PS