

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1459/M/2023
Assessment Year: 2015-16**

Mr. Mohammed Asif Zakir Husain Khan, 42, Khushnuma Apartment, 65, Maulana Azad Road, Agripada, Maharashtra- 400 011 PAN: AADPK9129M	Vs.	National Faceless Appeal Centre (NFAC), Delhi.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 05 . 10 . 2023
Date of Pronouncement : 14 . 12 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mr. Mohammed Asif Zakir Husain Khan (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 02.03.2023 passed by National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2015-16 on the grounds inter-alia that :-

"The Ld. CIT(A) erred in confirming the cash deposit of Rs.16,80,242/- as unexplained cash credit u/s 68 being cash deposit into bank account"

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : during the year under consideration the assessee has declared total income at Rs.4,92,520/- which was subjected to scrutiny. It was noticed that the assessee has made cash deposit of Rs.16,80,242/- in the bank account No.003601540885. Declining the contentions raised by the assessee that the said amount has been deposited by the assessee after deducting the same from 172 candidates who intended to go abroad for work. On failure of the assessee to substantiate its claim Assessing Officer (AO) treated the cash deposit of Rs.16,80,242/- as unexplained cash credit under section 68 of the Income Tax Act, 1961 (for short 'the Act') and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The Ld. A.R. for the assessee challenging the impugned addition confirmed by the Ld. CIT(A) contended that the AO as well as the Ld. CIT(A) have not examined the evidence brought on record by the assessee viz. copy of passport of the persons who

have deposited the money as security deposit, copy of job agreement with the parties to examine the issue “if the alleged amount deposited in the bank was the security deposit made by 171 workers whom M/s. Hamdan Consultants and M/s. Hamdan Tour and Travels, in which the assessee was a partner have sent abroad for work to comply with the conditions contained in the job agreement”.

6. However, on the other hand, the Ld. D.R. for the Revenue contended that when admittedly the assessee is a partner in M/s. Hamdan Consultants and M/s. Hamdan Tour and Travels the amount if any deposited by the worker as security should have been deposited in the firm’s account not in the individual account of the assessee and it should have been shown as the liability of the firm and that there is no brevity of the contract between the assessee and the workers qua this amount and no evidence is there if the said amount was reimbursed.

7. I have perused the documents brought on record by the assessee viz. copy of job agreement, bank statements of the workers who stated to have deposited the amount with the assessee being partner of M/s. Hamdan Consultants and M/s. Hamdan Tour and Travels. Job agreement also shows that they were required to deposit the amount as security to comply with the service conditions contained in the job agreement. However, all these documents have not been examined by the AO nor by the Ld. CIT(A) who was having coterminous powers. When the assessee is admittedly a partner in the M/s. Hamdan Consultants and M/s. Hamdan Tour and Travels amount if any taken by him

from the workers and deposited the same in his bank account, it will explain the source of money deposited who were sent abroad as is apparent from the vital documents. To decide the issue in controversy in entirety, additional evidence is required to be examined.

8. To decide the issue once for all I am of the considered view that the case is required to be remitted back to the AO to decide afresh after examining all the documents discussed in the preceding paras by providing adequate opportunity of being heard to the assessee.

9. Resultantly, the impugned order passed by the Ld. CIT(A) is set aside and appeal is allowed for statistical purposes.

Order pronounced in the open court on 14.12.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 14.12.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.