

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.As. No. 3336 & 3337/DEL/2023
Assessment Years 2017-18

Sandeep Kumar Mogha Plot No.B-18/5 Vipin Garden Near Kali Mata Mandir Uttam Nagar West, Delhi.	Vs.	ITO Ward-59(1) Delhi
TAN/PAN: BVKPK9243D		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjeev Kumar, Adv. Shri Manish Kumar, Adv.		
Respondent by:	Ms. Kirti Sankratyayan, Sr.DR		
Date of hearing:	02	01	2024
Date of pronouncement:	02	01	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

Both the captioned appeals have been filed by the assessee against the orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 26.09.2023 arising from the assessment order dated 16.12.2016 passed by the Assessing Officer (AO) under Section 144 of the Income Tax Act, 1961 (the Act), concerning AY 2017-18.

2. The captioned appeal concerns additions of Rs.3,50,000/- under Section 69A of the Act on account of cash deposits in the bank account of the assessee (SBI Account No.30836308126) made on 31.11.2016.

3. It is the case of the assessee that impugned cash deposits made in the bank account on 31.11.2016 is sourced out of cash withdrawals of Rs.3 lakhs withdrawn from the same bank account between 03.11.2016 to 8.11.2016 and cash Rs.50,000/- were already in hand at the time of deposits. It is further case of the assessee that on the basis of such information prevailing relevant facts, a remand report was called from the Assessing Officer. However, despite several opportunities, the Assessing Officer has failed to furnish the remand report and despite such failure on the part of the Assessing Officer, the CIT(A) has taken adverse view and endorsed the action of the AO without recognizing the apparent facts. The solitary basis for confirming addition is that some plain and typed paper has been filed by the assessee towards bank entries and the facts have not been declared in the specified column of return of income relevant to cash deposits during demonetization period in this regard. The ld. counsel submits that all the facts have been brought on record and both the Authorities, namely, AO as well as the CIT(A) were privy to such small deposits made and the source of such cash deposits has a direct nexus. The withdrawal has been made merely few days before the deposits in the bank account owing to demonetization of currency. The ld. counsel also furnished the copy of bank statement made by the State Bank of India vouching the entries of withdrawals and corresponding deposits. The ld. counsel thus submits that there was no warrant to engage in such kind of additions in the hands of the assessee despite clear nexus between the withdrawal and the deposits of such small amount.

4. The ld. DR for the Revenue, on the other hand, relied upon the appellate order.

5. I have carefully considered the rival submissions and perused the material available on record.

6. The addition of Rs.3,50,000/- under Section 69A towards cash deposits during demonetization period is in issue. The Assessing Officer has made additions on the ground that the source of such cash deposits is not established. It is the case of the assessee that the cash deposits are out of immediate withdrawals about the same time and out of small cash in hand. It is further case of the assessee that amount deposited during the demonetization period is very small and such deposit is just above the threshold limit of Rs.2,50,000/- clarified by the Government of India about that time. In the light of the submissions made on behalf of the assessee, I find that the source of cash deposits is broadly corroborated out of corresponding withdrawal and there are no justifiable reason existing in the present case to entertain suspicion and surmises. The assessee in the present case is stated to be serving as an Assistant Professor in Chandigarh University and therefore, such embellishments without any justifiable reason is uncalled for. The first appellate order is thus set aside and the additions made are quashed.

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

ITA No.3337/Del/2023 Assessment Year 2017-18

8. The captioned appeal concerns imposition of penalty under Section 271AAC(1) of the Act concerning AY 2017-18.

9. In the light of the decision rendered in ITA No.3336/Del/2023 where the quantum addition itself stood deleted, the cause for imposition of penalty under Section 271AAC(1) ceases to survive. Hence, the consequent penalty

under challenge in the present appeal stands deleted.

10. The appeal of the assessee in ITA No.3337/Del/2023 is allowed.

11. In the combined result, both the appeals of the assessee are allowed.

Order was pronounced and dictated in the open Court on 02/01/2024

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **/01/2024**

Prabhat