

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3492/Mum/2023
(Assessment Year: 2017-18)

Pravin Harjivandas Talati C/o. CA Himanshu Gandhi Chartered Accountants, 16 th Floor, D Wing, Trade World Tower, Kamala Mills Compound, Lower Parel, Mumbai-400 013	Vs.	ITO-Ward 42(1)(4) Mumbai
PAN/GIR No. AABPT 2804 J		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Himanshu Gandhi
Respondent by	:	Shri Surendra Kumar Meena

Date of Hearing	:	06.02.2024
Date of Pronouncement	:	28.02.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee has challenged the appeal on the following grounds:

1. *On the facts and circumstances of the case and law, the Ld. CIT(A) in confirming addition of Rs.16,39,525/- under section 68 of Income Tax Act, 1961 without considering the fact that cash deposited in bank account No. 65108055831 with State Bank of Patiala does not belong to appellant and it is actually belonging to M/s Aryan Institute of Technology Ghaziabad having PAN No. AABTP2804.J but wrongly reported by bank under appellant PAN No. AABPT2804.J while furnishing the details of Income Tax Department under Operation Clean Money Reporting.*

2. *On the facts and circumstances of the case and law, the Ld. CIT(A) in confirming addition of Rs. 10,00,000/- under section 69A of Income Tax Act, 1961 without considering the*

fact that cash deposited in bank account No. 6510805583 1 with State Bank of Patiala does not belong to appellant and it is actually belonging to M/s Aryan Institute of Technology, Ghaziabad having PAN No. AABTP2804J but wrongly reported by bank under appellant PAN No. AABPT2804J while furnishing the details of Income Tax Department under Operation Clean Money Reporting.

3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in passing ex-parte order without considering the statement of facts and attachment submitted at the time of filling appeal and even the facts that bank account belong to M/s Aryan Institute of Technology, Ghaziabad is duly mentioned in assessment order.

3. The brief facts are that the assessee is an individual and has not filed his return of income for the reason that there was no taxable income during the year under consideration. The Id. A.O. observed that there had been cash deposit of Rs.10 lacs in the assessee's account No.65108055831 with State Bank of Patiala, Jindal Nagar branch during the demonetization period between 08.11.2016 to 30.12.2016 for which notice u/s.142(1) of the Act was issued and served upon by the assessee. As the assessee has neither filed his return of income u/s. 139 nor in response to notice u/s. 142(1) of the Act, the Id. A.O. determined the total income of the assessee at Rs.26,39,525/- by making an addition of Rs.16,39,525/- u/s. 68 of the Act as 'unexplained cash credit' during non demonetization period and Rs.10 lacs u/s. 69A of the Act as 'unexplained cash credit' during demonetization period vide assessment order dated 13.12.2019 passed u/s. 144 of the Act being the best judgment assessment for the reason that the assessee has been non compliant throughout the assessment proceeding.

4. The assessee being aggrieved by the said order, was in appeal before the first appellate authority who vide order dated 04.08.2023 upheld the addition made by the Id A.O. on the ground that the assessee has failed to discharge the primary onus casted upon him under the provisions of the I. T. Act as the assessee has been non compliant even before the first appellate authority.

5. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that owing to various reasons, the assessee was unable to substantiate his claim before the lower authorities and sought for one more opportunity to present his case before the Id. A.O. for the reason that the assessee has a good case in hand.

7. The learned Departmental Representative ('Id.DR' for short), on other hand, vehemently opposed for remanding the issue back for the reason that the assessee has consistently been non compliant before the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the Id. A.O. had made an addition of the impugned amount u/s. 68 and 69A of the Act being cash deposited during demonetization period and non demonetization period. As per the said provision, it is evident that the assessee has failed to discharge the primary onus casted upon him to prove the identity, creditworthiness of the parties and the genuineness of the transaction neither before the A.O. nor before the Id. CIT(A). As per the details received from the Greater Bombay Co-op. Bank Ltd. Mira Road Branch in response to notice u/s. 133(6) of the Act, the Id. A.O. found that there has been cash and cheque credits in the assessee's account in the above mentioned bank during the demonetization period and cash deposit of Rs.10 lacs during the demonetization period which has not been substantiated by supporting documentary evidence by the assessee before the lower authorities. After duly considering the submission of the Id. AR, we deem it fit to restore this issue back to the file of the Id.

A.O. to extend the assessee one more opportunity to present his case. We, therefore, remand all the issues back to the file of the Id. A.O. with the direction that the assessee has to co-operate before the Id. A.O. without any undue delay.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28.02.2024.

Sd/-

Sd/-

(Om Prakash Kant)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 28.02.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai