

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.6/DEL/2024
(Assessment Year: 2017-18)**

Jeetendra Singh Rathore,
15/4, ACACIA Vatika City,
Sector 49, Sohna Road,
Gurgaon – 122 003 (Haryana).

vs.

ITO Ward 2 (2),
Gurgaon.

(PAN : AFLPR8664K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Kumar, CA
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 28.02.2024
Date of Order : 04.03.2024

ORDER

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 13.12.2023 for the assessment year 2017-18.

2. The assessee has taken the following grounds of appeal :-

“1. The Ld. Addl./Joint Commissioner of Income Tax, Appeal-12, Mumbai (“Addl.CIT-A”) was not justified in confirming the addition of Rs.7,50,000 made by the Id. Income Tax Officer (“AO”) under section 68 of the Income Tax Act, 1961 on account of cash deposited in the bank account of the appellant without appreciating the submissions of the appellant along with supporting evidence and the explanations furnished/provided during the course of the proceedings in the assessment as well as the first appeal.

2. The Ld. Addl. CIT-A was not justified in confirming the addition of Rs.7,50,000 made by the Ld. AO under section 68 of the Income Tax

Act, 1961 on account of cash deposited in the bank account of the appellant without appreciating the fact that the cash was deposited in the bank account out of the cash accumulated from cash sales, and the balance available after incurring expenses duly reflected in the books of account regularly maintained by him in the course of carrying out the profession of a Doctor and also running a hospital at Gurgaon and no adverse inference has been drawn by the Ld. AO from such books of account.

3. The Ld. Addl. CIT-A was not justified in confirming the addition of Rs.7,50,000 made by the Ld. AO under section 68 of the Income Tax Act, 1961 on account of cash deposited in the bank account of the appellant ignoring the fact that the cash was deposited in the bank account and that the bank statement or the pass-book is not books of account and, therefore, the credit of Rs.7,50,000 in the bank statement or the pass book does not attract the rigors of section 68 of the Act.

4. The Ld. Addl. JCIT-A was not justified in confirming the assessment order passed by the Ld. AO making an addition of Rs.7,50,000 under section 68 of the Income Tax Act, 1961 on account of cash deposited in the bank account of the appellant without providing an opportunity to the appellant of being heard in the matter and thus he has acted against the principle of nature justice.”

3. Brief facts of the case as per the statement of facts noted by the Id.

CIT (A) are as under :-

That the status of the appellant is that of Individual. The income tax return for the assessment year 2017-18 was filed on 03.11.2017 on an income of Rs.16,54,140. The assessment was completed on 19.12.2019 under section 143(3) of the I T Act, 1961 on an income of Rs.24,04,140. In the assessment the A. O. has made an addition of Rs.7,50,000 for alleged unexplained cash deposit under section 68 of the I T Act in the bank account during demonetization period. That the appellant is a doctor and running a 50 bedded hospital under the name Kriti Hospital at Plot No. 13, Sector 56, Gurgaon, Haryana-122001 w.e.f May 2016. The total receipts of the hospital during the year was at Rs. 217.73 lakhs. Out of total receipts, cash receipts from hospital services viz. IPO, OPO, lab testing, ultrasound and other services during the year was at Rs. 152.75 lakhs and total payments at Rs.143.10 lakhs (including cash deposit of Rs.91.73 lakhs with the banks during the year). The balance cash of Rs.10.79 lakhs was cash in hand as on 31.03.2017. That the appellant has deposited a sum of Rs.27 lakhs in the bank accounts as under: 10.11.2016 Rs. 7,00,000 14.11.2016 Rs.12,50,000 24. 11.2016 Rs.7,50,000 That the A. O. has considered the cash deposits on 10.11.2016 and 14.11.2016 amounting to Rs.19.50 lakhs out of receipts and treated the amount of Rs.7,50,000 deposited on 24.11.2016 as unexplained and added the same under section 68 of the I T Act. The A. O. has also analyzed the same from the point of view of Human Probability Test also and held that the explanations offered by the appellant are not accepted.

4. Upon assessee's appeal, ld. CIT (Appeals) confirmed the addition.
5. Against this order, assessee is in appeal before the ITAT. I have heard both the parties and perused the records.
6. I find that assessee is running a nursing home. The total receipts of the hospital during the year were Rs.217.73 lakhs. The books of account have not been rejected in this case. All cash deposits have been accepted from the hospital services of the nursing home. Further, as regards a deposit of Rs.7,50,000/- adverse inference has been taken that assessee deposited the same after 16 days. I find that this is very unreasonable approach. When assessee has such a huge turnover and books of account have also not been rejected and no defect has been pointed out therein, adverse inference taken in this case is not sustainable. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.
7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 7TH day of March, 2024.

**SD/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 4th day of March, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**