

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "SMC" BENCH : PUNE [VIRTUAL HEARING]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.1375/PUN./2023 [E-APPEAL]
Assessment Year 2017-2018

Shri Mahendrakumar Khetmal Jain, Khetiya Road, Shahada, Dist. Nandurbar. Maharashtra. PIN – 425 409 PAN ABKPJ3556H (Appellant)	vs.	The Income Tax Officer, Ward-1, Opp. MSEDCL Office, Sakri Road, Dhule. PIN – 424 001. Maharashtra. (Respondent)
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For Assessee :	Smt. Deepa Khare
For Revenue :	Shri Basavaraj Hiremath

Date of Hearing :	04.03.2024
Date of Pronouncement :	04.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2017-18, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1058255764(1), dated 28.11.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that the NFAC has erred in law and on facts in partly confirming the Assessing Officer's action making addition u/sec.69A r.w.s.115BBE of Rs.16.19 lakhs out of Rs.25.19 lakhs; both the parties have invited my attention to the lower appellate discussion to this effect as under :

“5.4. I have gone through the assessment order, submission of the appellant and facts of the case. The appellant is engaged in the business of wholesale, semi wholesale & retail trade of Kirana and Bhusar goods. It is a matter of fact that the appellant has revised his audit report for the financial year under consideration. The AO has pointed out some discrepancies between the cash sale summary and the cash book provided by the appellant. The AO has also stated that the calculation based on goods received inwards and goods sent outward leads to a higher GP than the GP declared by the appellant. The appellant in this regard has given clarification to the AO vide reply dated 26.11.2016. On perusal of the said reply (as reproduced in the assessment order) it is noted that the appellant has provided due explanation reconciling the discrepancies pointed out by the AO. Denial of the cash balance claimed by the appellant as on 08.11.2016 without rejection of books of accounts by the AO and without pointing out any specific discrepancies in the audited books merely on the fact that the appellant has revised the audit report three times is not correct. Hence, the claim of the appellant that deposit of amount of Rs.14,00,000/- in SBN relates to the regular business activity of the appellant is acceptable.

5.5. Now coming the second claim of the appellant that out the total SBN deposits of Rs.25,19,000/- an amount of Rs.11,19,000/- pertains to the family members, it is observed

that such claim has been made by the appellant in the advance stage of the assessment proceedings. It is pertinent to note that had this been the correct position the appellant would have brought this to the notice of the department in his reply furnished on the window opened in e-filing portal 'Cash Transaction 2016' after the demonetization period. In the said window the appellant replied that the entire amount deposited relates to the regular business activity of the appellant. This very fact indicates that the explanation offered by the appellant with regard to the cash belonging to the family members lacks credibility. Further, the analysis of cash in hand position of each of the family members made by the AO in the table para 12 on page 5 of the assessment order reveals that the family members did not have the standing to have the huge cash amount of Rs.11,19,000/-. Moreover, since each of the family members is a major filling his/her ITR and has separate bank accounts, applying the test of human probability it is unlikely that this amount of Rs.11,19,000/- deposited in SBN in the bank account of the appellant related to the family members. The submission of affidavits from the family members stating that the cash deposited in SBN pertain to them are self-serving documents and do not stand the test of evidence as the family members are the parties closely related to the appellant. Thus, the cash deposited in SBN during the demonetization period of Rs.11,19,000/- claimed to be pertaining to family members is held to be the unexplained money of the appellant himself.

Accordingly, the addition of Rs.11,19,000/- is upheld. The Ground of appeal raised is partly allowed.”

3. Learned counsel representing the assessee has invited this tribunal's attention to the assessee's detailed paper book running into 150 pages that the assessee had duly filed all the relevant material explaining source of the impugned cash deposits during demonetization. Mr.Basavaraj on the other hand strongly opposed the assessee's contentions of alleged explaining the source of the impugned cash deposits.

4. After giving my thoughtful consideration, I am of the view that even if the assessee has filed his voluminous paper book running into 150 pages, his contention that the cash deposit during demonetization period in fact had come from his other family members who are regular return filers, could hardly be accepted in principle. The fact also remains that learned lower authorities have not given credit of the accumulated cash in his household as well. Faced with the situation, I deem it appropriate in larger interest of justice that a *lumpsum* addition of Rs.8 lakhs out of that in issue of Rs.11.19 lakhs deserves to be upheld. The assessee gets relief of Rs.3.90 lakhs in very terms. Necessary computation shall follow as per law. Ordered accordingly.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open Court on 04.03.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 04th March, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.