

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 635/Ahd/2023
Assessment Year 2017-18**

Namdevsinh Mahendrasinh Vaghela, 201, 02 nd Floor, Devashish Complex, Nr. Regenta Central Antarim Hotel, Off.C.G. Road, Ahmedabad-380006 PAN: AWAPV4117H (Appellant)	Vs	Income Tax Officer, Ward-3(2)(3), Ahmedabad (Respondent)
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**Assessee Represented: Shri Divyang Shah, A.R.
Revenue Represented: Shri Urjit B Shah, Sr.D.R.**

Date of hearing : 06-03-2024
Date of pronouncement : 20-03-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the assessee as against the exparte appellate order dated 29-07-2023 passed by Commissioner of Income Tax [Appeals], National Faceless Appeal Centre [NFAC], Delhi arising out of the assessment order passed under section 144 of the Income Tax Act, 1961 [herein after referred as the Act] relating to the assessment year 2017-18.

2. The brief facts of the case is that the assessee is an individual and agriculturists by profession, hence no Return of Income filed by the assessee. During the demonetization period (9th November to 30th December, 2016), the assessee deposited cash of Rs. 10,67,000/- in his Bank account but not filed the Return under section 139 of the Act. A notice was issued asking the assessee to file the Return of Income. In response, the assessee filed his Return of Income on 28.06.2019 that he made total cash deposit of Rs.15,16,000/- in Punjab National Bank namely Rs. 4,49,000/- on 02.11.2016 before demonetization period and Rs.10,67,000/- during demonetization period.

2.1. The assessee further explained that he sold his agricultural land to Smt. Charmi Rajendra Joshi for a total consideration of Rs.1,18,47,000/- and assessee's 50% share namely Rs.59,23,500/- received from the purchasers by way of two cheques both dated 11.12.2014 for a sum of Rs.20,00,000/- and Rs.15,00,000/- respectively. The balance sale consideration of Rs.24,23,500/- was received by open Cheque No. 54 of Kotak Mahindra Bank and the same was encashed by the assessee on 06.01.2015 directly from the bank. Thus the assessee explained that the source of cash deposit of Rs.15,16,000/- is from the above sale consideration. The Assessing Officer has not accepted explanation offered by the assessee and held that sale consideration received in December 2014 could not have kept ideal for two years period and re-deposited during demonetization period and thereby made an addition of Rs.17,61,310/- as unexplained cash u/s. 69A of the Act and charged tax at 60% u/s. 115BBE of the Act.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A), NFAC, Delhi. The Ld. CIT(A) given three opportunities on 23.02.2021, 14.03.2022 and 06.07.2023. Since the assessee has neither participated nor filed any submissions, the appeal was decided exparte confirming the additions made by the Assessing Officer.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in confirming addition of Rs.17,61,310/- as unexplained money u/s 69A of the Act?

2. Whether, on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in not allowing benefit of available cash in hands of appellant?

5. Ld. Counsel for the assessee submitted before us a Paper Book containing the bank accounts of the assessee held in Punjab National Bank, State Bank of India and land buyer's bank account namely Kotak Mahindra Bank and demonstrated before us that the sale proceeds on sale of assessee's agricultural land were clearly deposited Rs. 15,00,000/- and Rs.20,00,000/- in State Bank of India account on 11.12.2014 and a cash of Rs. 24,23,500/- was withdrawn in open cheque from Kotak Mahindra Bank. From the above, the assessee made cash deposit of Rs.4,49,000/- on 02.11.2016 before demonetization period and Rs.10,67,000/- during demonetization period. The assessee being an agriculturist and there is no other income, however the Assessing Officer disbelieved the same and added the cash deposit of Rs.17,61,310/- as the unexplained credit entries, which is against the provisions of

Section 69A of the Act. When the assessee more particularly explained the source namely sale of agricultural land, therefore the Assessing Officer is not correct in making the addition and taxing u/s. 115BBE of the Act and the same is liable to be deleted.

6. Per contra, the Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Lower Authorities.

7. We have given our thoughtful consideration and perused the materials available on record. Though the assessment order is framed as an exparte order. The assessee reply dated Nil is reproduced at Page No. 6 & 7 of the assessment order, wherein the assessee enclosed the Return of Income, Copy of the Passbook of Punjab National Bank and State Bank of India, Copy of the agricultural bills and 7/12 records, copy of the Sale Deed and bank statement of Kotak Mahindra Bank of the purchaser of the property.

8. The only reason given by the Ld. A.O. for two years gap in re-depositing of cash, during the demonetization period thereby added as the unexplained money u/s. 69A of the Act. In our considered opinion, the assessee offered proper explanation with bank details about the sale of the agricultural land and also explaining the source for redeposit of cash of Rs.4,49,000 on 02.11.2016 and cash deposit of Rs.10,67,000/- on 19.11.2016 during demonetization period. Since the above receipts of Rs.24,23,500/- were drawn from Kotak Mahindra Bank on 06.01.2015 on sale of agricultural land, we do not find any infirmity in the explanation offered by the assessee and the source of the cash is also properly explained by

the assessee and provisions of Section 69A and taxing the income u/s. 115BBE of the Act does not attract in the present case. Therefore the addition made by the Assessing Officer is liable to be deleted.

9. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 20-03-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 20/03/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद