

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1421/KOL/2023
Assessment Year: 2017-18**

Manoj Kumar Parmar (HUF) C/o S. K. Garg & Co. Advocates, 16, Strand Road, Room No 1207A, 12 th floor, Kolkata-700001. (PAN: AANHM8965P)	Vs.	Income tax Officer, Ward-1(1), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, Advocate
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 09.04.2024
Date of Pronouncement : 10.04.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2023-24/1057304219(1) dated 23.10.2023 passed against the assessment order by ITO, Ward-1(1), Kolkata u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 02.12.2019 for AY 2017-18.

2. Grounds of appeal raised by the assessee are reproduced as under:

“1. That the impugned assessment order dated 02.12.2019 passed by Ld. Income tax Officer, Ward 1(1), Kolkata (the Assessing Officer), under section

144 of the Income Tax Act, 1961 (the Act) is against law and facts of the case and therefore, perverse and is liable to be annulled.

2. That the Assessment Order was passed without service of any valid notice U/s. 143(2) of Income Tax Act 1961 and therefore the assessment order is bad in law and should be quashed.

3. That on the facts and the circumstances of the case, the Learned Commissioner of Income tax Appeals - NFAC had erred both in law and on facts by confirming the order of the assessing officer for making sustaining an addition of the sum of Rs.30,97,500/- on account of cash deposited during demonetization period as unexplained assets U/s. 69A of Income Tax Act 1961.

4. That the Assessing Officer erred in charging interest of Rs.9,74,119/- under section 234A & 234B of the Act.

5. That the Appellant Assessee craves leave to add, alter, amend and/or to withdraw any ground of appeal.”

3. Brief facts of the case are that assessee filed its return of income on 30.03.2018 reporting total income of Rs.3,26,890/-. The impugned assessment order has been passed ex parte u/s. 144 of the Act wherein an addition of Rs.30,97,500/- u/s. 69A on account of cash deposits in bank account during the de-monetisation period has been made. Assessee is aggrieved in this respect to submit that it has not received notices u/s. 143(2) and 142(1) since it had shifted to Surat and its correspondence address had changed. He thus, raised the legal issue of non-service of notices making the impugned assessment bad in law.

3.1. On the legal issue, it is also contended that the notices issued and the assessment concluded is by an AO not having competent jurisdiction under the provisions of the Act and, therefore, the entire assessment proceeding is void ab initio. It is claimed by the assessee that the impugned assessment proceedings have been completed by the AO holding corporate charge though the assessee is a HUF and not a corporate body. In the course of assessment proceedings, explanations and evidence were called for in respect of source of

deposit of cash in the bank account during the de-monetisation period.

3.2. Assessee had deposited Rs.30,97,500/- in its bank account with Sarvodaya Sahakari Bank Ltd., Main Branch having bank Account No. 1001021011241. Ld. AO had data relating to the deposit of cash in the bank account of the assessee for which the source of deposit were not explained. The said amount was added as unexplained income in the hands of the assessee. Aggrieved, assessee went in appeal before the Ld. CIT(A). On the merits of the case, it was submitted by the assessee that assessee had cash in hand, reported in its Balance sheet as on 31.03.2016 amounting to Rs.16,95,375/- for which a copy of Balance Sheet was placed on record. From the bank statement it was submitted that there were several cash withdrawal from the bank account from 01.04.2015 to 31.12.2016 i.e. the last date of de-monetisation deposit.

3.3. It was submitted that there were cash withdrawal of Rs. 17 lakh on 29.04.2016 and 16.08.2016 duly recorded in the bank statement. Cash flow statement in this respect was also furnished to demonstrate availability of cash in the hands of the assessee out of which the deposit was made in the bank account during the de-monetisation period. It was contended that these facts have not been appreciated in proper perspective and, therefore, addition so made is not warranted.

3.4. The details of cash withdrawn by the assessee during the year is listed by the Ld. CIT(A) in para 8.4 which is reproduced as under:

The Sarvodaya Sahkari Bank Ltd.	A/c. No. 100-102-101-1241
Date	Cash withdrawn
16.08.2016	Rs.5,00,000/-
29.04.2016	Rs.12,00,000/-
09.11.2015	Rs.13,00,000/-
13.10-.2015	Rs.5,10,500/-
08.07.2015	Rs.15,00,000/-

3.5. On these withdrawals, ld. CIT(A) has made a general observation that the assessee is required to bring on record the circumstances under which he had to first withdraw the cash and then redeposit which is against the nature of human probabilities. The Ld. CIT(A) has questioned on the apparent purpose of the withdrawals. He thus, confirmed the addition made by the AO by holding that assessee has not been able to justify the withdrawals out of which deposits of cash were made in the bank account. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel for the assessee contended on the legal issue of non-service of notices u/s. 143(2) and 142(1) on account of change in address. He further contended that the assessment has been completed by an AO not having competent jurisdiction as he had the corporate charge and assessee is not a corporate entity. However, in this respect, there is nothing discernible from records to support the contentions of the assessee. Accordingly, we are not in agreement with the legal contentions raised by the assessee.

4.1. On the merits of the case, we take note of the documents placed on record by the assessee in the paper book containing 18 pages. Assessee has placed on record a cash flow statement to demonstrate availability of cash in hand at the opening of the impugned assessment year i.e. on 01.04.2016 of Rs.16,95,375/- which has been duly reported in its Balance Sheet. Subsequent to this, in the impugned year under consideration, there has been withdrawal of Rs.19,40,000/-, thus, making available a sum of Rs.36,47,792/-. Out of these funds, assessee had deposited Rs.30,97,500/- in its bank account. Ld. Counsel corroborated these transactions from the bank statement placed on record which are undisputed.

4.2. Ld. CIT(A) has questioned on the purpose of withdrawal by the assessee without bringing any thing cogent on record to demonstrate that the said withdrawals has been utilised elsewhere and otherwise by the assessee so as to contend that it was not available with the assessee for deposit in its bank account. It is a mere apprehension on the part of the Ld. CIT(A) to question and doubt on the apparent purpose of withdrawal of cash and keeping it as available in hand. We note that the announcement of de-monetisation had imposed compelling reasons on the assessee to deposit the available cash in hand in terms of the directions issued in this respect which the assessee had complied with. Had there been no such announcement, this amount would have continued as cash in hand for the assessee. Assessee has duly explained the source and nature of the deposit of cash in its bank account, all of which have been duly accounted and reported in its books of account and corroborated by the cash flow statement and the bank statement.

4.3. Considering these facts on record and the submissions made before us, corroborated by documentary evidence, we find it proper to delete the addition made by the AO in respect of deposit of cash in the bank account. Ground no. 4 taken by the assessee in this respect is allowed.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 10th April, 2024.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 10th April, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata