

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. 1061/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2017-2018

Ajaykumar D Jain, 40, Highway Park Society, Ahmedabad. PAN: AAVTS2914G	Vs.	Income Tax Officer, Ward 7(2)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Chetan Agarwal, AR
Revenue by	:	Shri Purushottam Kumar, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **12/03/2024**

घोषणा की तारीख /**Date of Pronouncement**: **10/04/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Ahmedabad, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-2018.

2. The assessee has raised the following grounds of appeal:

Ld. CIT(A), erred in law as well as in fact in confirming addition Rs.14,29,000/- u/s.69 made by the Ld.AO treating entire cash deposited during demonetization as an unexplained income in the hands of an appellant.

3. At the outset, it was noticed that there was a delay in filing the appeal by the assessee for 128 days. The assessee has filed the affidavit dated 06/03/2024 explaining the reason for the delay which was duly notarized. It was submitted that the CA who was handling the proceedings before the first appellate authority has not updated about the fact that the appeal of the assessee has been dismissed by Ld. CIT(A). As such the assessee came to know about the dismissal of the appeal by the Ld. CIT(A) when the demand was raised by the Income-tax Department in November 2023. Accordingly, the assessee changed the tax consultant for necessary remedial action and therefore the appeal was filed before the ITAT belatedly.

4. The Ld. AR before us contended that the delay in filing the appeal was attributable to the CA who was handling the first appellate proceedings and there was no motive or negligence of the assessee to avoid the filing of the appeal within the stipulated time. Hence, the Ld. AR submitted that there was sufficient cause for not filing the appeal within the stipulated time and therefore the same needs to be condoned.

5. On the other hand, the Ld. DR did not raise any serious objection on the condonation petition filed by the assessee, however, left the issue at the discretion of the bench.

6. We have heard the rival contentions of both the parties and perused the materials available on record. Considering the reason for the delay in filing the appeal narrated above and no objection raised by the revenue, we hold that there was sufficient cause for not filing the appeal within the stipulated time. Therefore, we are of the view that the delay in the present case deserves to be condoned. Thus, we condone the delay and proceed to adjudicate the matter on merit.

7. The only issue raised by the assessee is that Ld. CIT(A) erred in confirming the order of the AO for a sum of Rs. 14,29,000/- u/s 69 of the Act on account of deposit of cash in the bank during the demonetization period.

8. The AO during the assessment proceedings found that the assessee failed to explain the source of cash in the bank account during demonetization period for the sum of Rs. 14,29,000/- only and therefore he treated the same as unexplained money u/s 69 of the Act and added to the total income of the assessee.

9. On appeal, the Ld. CIT(A) confirmed the order of the AO by observing as under:

To sum up, the ground raised by the appellant against the addition made in the assessment is rejected and the action of the AO is confirmed. There is no error found in passing the order under section 143(3) of the Act and therefore the ground that "Learned AO erred in law as well as on facts in passing the order u/s.143(3) of the Act." is ill founded and accordingly stands rejected. The appellant did not file additional grounds during appeal proceedings.

In the result, all the grounds raised by the appellant are rejected and the appeal is dismissed.

10. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

11. The Ld. AR before us filed a paper book running from pages 1 to 96 and submitted that the assessee is running a mobile shop under the name and style M/s Earth. As per the assessee, the cash was deposited during the demonetization period out of the sale proceeds. However, the AO disagreed with the submission of the assessee by observing that the assessee has not furnished the cash book as well as the assessee has not furnished the comparable details about the deposit of cash in the year under consideration vis-à-vis in the previous year. Likewise, the assessee has not furnished purchase bills and sales bills. Therefore, the AO

treated the same as unexplained money and added the sum of Rs. 14,29,000/- to the total income.

11.1 The Ld.AR also filed the copy of VAT return and sales ledger demonstrating that the details of sales made during the period was duly reported in VAT return. The copies of the sales ledger, VAT returns are placed on pages 10 to 38 of the paper book.

11.2 Likewise, the Ld. AR has also filed the cash book where the transaction of cash sales and deposits of money in the bank was duly recorded which is placed on pages 39 to 47 of the paper book. The Ld. AR filed the financial statements placed on pages 48 to 96 of the paper book demonstrating that the cash deposited in the bank account was utilized for making the payment to the creditors. Thus, it was contended by the Ld. AR that the amount of cash deposited was out of cash sales and therefore no addition is warranted.

12. On the other hand, the Ld. DR contended that the assessee has not furnished the details of the purchase and sales bills and therefore he supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. The issue before us is limited to the extent whether the amount of cash deposits during the demonetization period represents the unexplained money u/s 69 of the Act. As per the assessee, the cash was deposited out of cash sale which was utilized in making payment to sundry creditors.

13.1 The assessee to justify the cash deposits has furnished the sales ledger, VAT returns, cash book and the bank statement. There was no defect pointed out by the authorities below with respect to the aforesaid details. Furthermore, on verification of the bank statement we note that most of the cash deposited during

the demonetization period has been utilized for making the payment to sundry creditors. Thus, a con-joint reading of these documents, available on record, reflects that the amount of cash deposits appears to be out of retail sales which was duly reported in VAT returns. Thus, we are of the view that such cash generated against the sales could not be treated as unexplained money u/s 69A of the Act. Admittedly, the purchase bills and sales bills were not furnished by the assessee during the assessment proceedings but considering the fact that sales has been duly incorporated in the VAT return and utilization of cash deposits in the bank, the benefit of doubt should be given to the assessee that the cash was deposited out of sale proceeds. Hence, we set aside the finding of the Ld. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

14. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the Court on 10/04/2024 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
10/04/2024