

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1013/Kol/2023
Assessment Year: 2017-18**

Prity Agarwal C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, suite 213, 2 nd floor, Kolkata-700069. (PAN: AFNPA9885R)	Vs.	Income Tax Officer, Ward- 2(4), Siliguri.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddarth Agarwal, Advocate
Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 18.01.2024
Date of Pronouncement : 21.03.2024

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/250/2023-24/1055815158(1) dated 07.09.2023 passed against the assessment order by ITO, Ward-2(4), Siliguri u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 23.12.2019 for AY 2017-18.

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

“1. For that the Ld. CIT(A) ought to have quashed the assessment made by the A.O in an inactive PAN i.e. AFNPA9884R.

2. For that the Ld. CIT(A) was not justified in confirming the addition of Rs.1,05,43,856/- made by the A.O. on account of value of credit entries including cash deposits appearing in the Bank account with Oriental Bank of commerce deeming it as a unexplained money u/s 69A.

3. For that the Ld. CIT(A) ought to have appreciated that the entire transactions in the aforesaid bank account were relating to the business of the assessee and the assessee had offered the income arising therefrom to tax u/s 44AD.

4. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. Assessee did not press ground no.1 hence, it is dismissed as not pressed.

4. Brief facts of the case are that notice u/s. 142(1) was issued on the assessee on 12.03.2018 calling the assessee to prepare a true and correct return of income in respect of which she is assessable under the Act during the year under consideration. According to Ld. AO, assessee failed to furnish the return u/s. 139 as well as in response to notice issued u/s. 142(1) of the Act. Contrary to the above facts, assessee has placed on record in the paper book, acknowledgment of return filed for the year under consideration, dated 08.02.2018 for a total income of Rs.8,45,410/- wherein she has reported income from business u/s. 44AD of Rs.9,71,260/- on gross receipt/turnover of Rs.86,46,500/-. The net profit declared is @ 11.23% as against deemed profit of 8%.

4.1. In the course of assessment, Ld. AO noted that assessee has deposited cash of Rs. 14 lacs in her bank account during demonetization period in the account with Oriental Bank of Commerce. Ld. AO also noted that there are other credit entries including cash appearing in the said bank account during the year under consideration, totalling to Rs.1,05,43,856/-. He called for details as to nature and source of these deposits in the Oriental Bank of Commerce which included both cash deposit and credit entries. In this respect assessee submitted that she was allotted two Permanent Account No. being AFNPA9884R and AACPE3241K out of which the first PAN i.e. AFNPA9884R was surrendered. However, unfortunately

the bank did not rectify the PAN in the savings account of the assessee and, therefore, the transactions in the bank account were noted in the surrendered PAN. Assessee had filed her return under the PAN AACPE3241K in which she had disclosed her bank account and offered the income earned during the year. Assessee had furnished the relevant details in the course of assessment proceedings as called by the Ld. AO. To substantiate this claim, reference was made to e-proceeding response acknowledgment dated 17.09.2019 and 06.12.2019 whereby all the required details were e-filed by the assessee. These response acknowledgments are placed in paper book at page 22 to 24.

4.2. Assessee had furnished the details of deposit of cash in her savings bank as well as the break-up of total deposits which is tabulated as under:

Breakup of total deposits in the bank		
1. Sale of Flat		Rs. 86,46,500 /-
2. Cash Deposited		
(a) Cash (Stridhan)	Rs. 6,50,000 /-	
(b) Cash drawn from bank on 26.08.2016	Rs. 5,00,000 /-	
(c) Past Savings	Rs. 2,50,000 /-	Rs. 14,00,000 /-
3. Advance for Flat		Rs. 4,60,000 /-
4. Interest & Dividend		Rs. 37,358 /-
Total		Rs. 105,43,858 /-

4.3. In respect of deposit towards sale of flat, assessee had furnished the details of amount received towards sale of flat from the seven purchasers giving details of the sale deed, date of registration, name of the purchaser and their address, amount received from each of the purchaser and the mode of payment, totalling to Rs.86,46,500/-. These details are also tabulated as under:

SL. NO.	DEED NO.	DATE	PURCHASER	AMOUNT	MODE OF PAYMENT
1	4878/2016	16.08.2016	SRI SAMIK MITRA SHASTRINAGAR, P.O. SEVOKE ROAD, SILIGURI	2,106,000.00	BANK
2	5148/2016	26.08.2016	SRI RAJESH KR. JOSHI SEVOKE ROAD, P.S.. & P.O. SILIGURI	1,825,000.00	BANK
3	4879/2016	16.08.2016	SRI SWARUP RANJAN GUNE SHASTRINAGAR, P.O. SEVOKE ROAD, SILIGURI	18,06,000.00	BANK
4	6633/2016	25.11.2016	SRI ANIL KR GUPTA SHASTRINAGAR, P.O. SEVOKE ROAD SILIGURI	2,011,000.00	BANK
5	6519/2016	23.11.2016	SRI BEDH PRAKASH PRADHAN DEV AREA, BHODI MARG P.O. & P.S. GANGTOKE	316,000.00	BANK
6	467/2017	06.02.2017	SRI PRADIP SHARAM SHASHRINAGAR, P.O. SEVOKE ROAD, SILIGURI	358,500.00	BANK
7	4889/2016	16.08.2016	SRI RAMESH KAMI SHASHRINAGAR, P.O. SEVOKE ROAD SILIGURI	224,000.00	BANK
			TOTAL	8,646,500.00	

4.4. It was contended by the assessee that gross receipt from sale of flat was reported by her in the return u/s. 44AD and on the same, the income was offered of Rs.9,71,260/- @ 11.23%. To support her claim, she also furnished a copy of certificate in Form ST-2 issued by Central Board of Excise & Customs towards her registration for service tax. In the said certificate, the taxable service for which the registration was obtained specifies “*construction of residential complex*”

service, works contract service.” She had also furnished copy of certificate issued towards her registration for professional tax under the West Bengal State Tax on Professions, Trades, Callings And Employments rules, 1979. She thus, claimed that the cash deposit and credit entries appearing in her bank account had been duly substantiated and the income thereon has been reported in the return filed by her. Further in order to substantiate the sale of flat, copies of the relevant sale deeds as detailed in the table above were furnished and placed on record.

4.5. To substantiate her deposit of cash from stridhan and past savings, details in the returns filed by her in past four years including the year under consideration as well as returns filed by her husband were placed on record. These details substantiated the total income of the family which was sufficient to justify the quantum of stridhan and past savings out of which the deposit of cash made by her in the bank account. A cash of Rs. 5 lakh was withdrawn on 26.08.2016 which was available for deposit, forming part of deposits made during the demonetization period. The details of the family total income are also tabulated as under:

Prity Agarwal
AY 2017-18
Family total Income

Sl. No	Name	Assessment Years					Total Five years' income
		2017-18	2016-17	2015-16	2014-15	2013-14	
1	Prity Agarwal (Self)	8,45,410.00	6,57,740.00	4,21,040.00	3,84,940.00	6,22,270.00	29,31,400.00
2	Pankaj Agarwal (Husband)	10,76,430.00	9,86,630.00	4,57,570.00	4,50,320.00	8,00,320.00	37,71,290.00

4.6. Not satisfied with the above submissions of the assessee, Ld. AO concluded the assessment u/s. 144 and made the addition of Rs.1,05,43,856/- u/s. 69A holding it as unexplained money. Aggrieved, assessee went in appeal before the Ld. CIT(A) who confirmed the addition so made. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee reiterated the facts noted above. He also referred to the paper book containing 185 pages placed on record which corroborates the above stated facts.

6. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below.

7. We have heard the rival contentions and perused the material available on record. We have gone through the above stated facts and corroborated the same with the material placed on record in the paper book, details of which are already extracted in the form of tables above. The above stated facts are uncontroverted and duly substantiated by the material placed on record. We find that the nature and source of deposit of cash as well as credit entries appearing in the bank account of the assessee are explained. The mismatch arose because of two PANs, one of which was surrendered and was not updated in the bank account. Assessee had also filed her return of income which is on record against the other PAN and has duly reported her income as well as the bank account in respect of which the details were called for by the Ld. AO. Considering the above discussion and the factual matrix supported by corroborative material on record, we delete the addition made by the Ld.

AO u/s. 69A amounting to Rs.1,05,43,856/-. Ground Nos. 2 and 3 taken by the assessee in this respect are allowed.

8. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 21st March, 2024.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 21st March, 2024

JD, Sr. P.S.

Copy to:

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

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata