

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 629/JP/2023
निर्धारण वर्ष/Assessment Years : 2017-18

Govind Saini 3,4,5 Near Manglam Hospital, Ganesh Vihar Colony, Goner Road, Jaipur	बनाम Vs.	ITO, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BXCPS 9784 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Mukesh Khandelwal (CA)
राजस्व की ओर से/ Revenue by : Sh. Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 15/02/2024
उदघोषणा की तारीख/Date of Pronouncement: 22/04/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal arises on account of the order of the National Faceless Appeal Centre, Delhi dated 04/09/2023 [here in after Id. NFAC] for assessment year 2017-18. The said order in turn arise from the order dated 21.12.2019 passed under section 143(3) of the Income Tax Act, by ITO, Ward 7(2), Jaipur.

2. In this appeal, the assessee has raised following grounds: -

“1. That the Id. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in confirming the addition of Rs. 2237511/- on account of amount received in cash from persons for online fund transfer through novapay online portal and deposited in Bank.

2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of Appeal.”

3. Succinctly, the fact as culled out from the records is that in this case, return of income was e- filed u/s 139(1) of the Income-tax Act 1961 on 01.06.2017, declaring total income of Rs 4,13,210/- During the year under consideration the assessee is running an E-Mitra Kiosk and providing service of deposit utility bill of various consumers to the Government Department like water bill and electricity bills. As per computation of income filed the assessee has declared income from business and profession of Rs. 4,35,256/- u/s. 44AD on total turnover of Rs. 9,96,782/-. The case of the assessee was selected for the examination of the issue of cash deposits during the demonetization period. The case was selected for manual scrutiny after obtaining the prior approval of Pr. CIT-3, Jaipur. Accordingly, notice u/s 143(2) of the income-tax Act, 1961 was on-line issued on 29.09.2018 on ITBA Portal which was served upon the assessee through E-Mail or Regd. Post. Notice u/s 142(1) was on-line issued on

05.06.2019 fixing the case for hearing on 12.06.2019 but compliance of the same was not made.

3.1 As regards the issue of cash deposited in the bank account during the demonetization period the assessee submitted that the assessee is running an E-mitra Kiosk which was authorized Government of Rajasthan and providing service to customers of deposition of electricity bills, water bills, etc. He has further stated that he collects cash from customers for electricity. water, telephone bills payment and the same was deposited in his current account, paid to concerned agency from his account. For the same, he received commission which has duly shown in his ITR filed for the relevant period. In support of his claim, he has furnished copy of bank account, daily transaction summary, payment sheet of M/s Aksh Optifibre Ltd., details of cash deposits during December along with copy of deposit slips for verification. He has further stated that during the demonetization period, the assessee has deposited total cash of Rs.56,01,800/-, He furnished the details that during the month of November-2016, amount of Rs.5,44,512/- and in December-2016 amount of Rs.28,19,777/- was collected in cash, from customers for payment of electricity / PHED bills and university fee payment. He has also explained that In December-2016,

he has deposited amount of Rs.35,13,200/- out of which SBN was only Rs.27,500/- Other than M/s Aksh Optifibre Ltd., he is also authorized agent of M/s Nova Pay Solutions and M/s Pay Point India. He has filed the copy of statement of Nova Pay for the month of December only. He has not filed any details regarding that for which purpose the cash was collected, from whom such cash was collected. Therefore, in absence of the full details, the source of such deposits cannot be acceptable. As, the assessee has produced / furnished the details of cash collection of Aksh Optifibre account by which it is cleared that from whom cash was collected, how much collected for which purpose. Thus, total amount collected for E-mitra activity of Rs.33,64,289/- as against total cash deposits of Rs.56,01,800/- during the demonetization period. Hence, the source of amount of Rs.22,37,511/- (Rs.56,01,800 - Rs.33,64,289) remains unexplained, for which ample opportunities have been given to the assessee to explain the same but he failed to do so. Therefore, the amount of Rs 22,37,511/- deposited in the bank account of the assessee is treated as unexplained credits u/s 69 A of the I.T. Act 1961.

4. Aggrieved from the order of the assessment, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.2 I have gone through carefully the assessment order and the submission of the appellant on this issue of cash deposit during the demonetization period. The appellant is a service provider for facilitating the general public to make payment of various government dues. The appellant is an E-Mitra operator appointed by the Rajasthan State Government to provide facility to the citizen to deposit various government taxes, telephone, electricity, water bills and other services authorized by the government. He collects the money from public on account of different bills and deposits it in his bank account thereafter transfers it to the government account through Aksh Optifibre (Nodal Agency). During the period of demonetization, the appellant has deposited Rs. 33,64,279/- being the money collected from public. The appellant has maintained complete details of the depositors such as their name purpose of collection of money alongwith the amount of collection. The Id. AO has accepted the amount of Rs. 33,64,279/- cash deposited as explained and justified.

4.3. The appellant is also authorized agent of M/s Novapay Solutions and M/s Pay Point India for the activities of these companies to collect money from customers through agent and transfer the same to the person suggested by the customers. Here nature of work is different from the work of E-Mitra operator appointed by the government of Rajasthan. The appellant was working as interface to transfer the money just like Paytm or Google Pay. Though the appellant has claimed that the nature of work is identical in both the cases. During the assessment proceedings, the appellant could not provide complete details of source of money collected from the customers, which was further deposited by the appellant in his bank account. The Id. AO has pointed out that the appellant did not provide the details of customers and the purpose of the money deposited by them. During the appellate proceedings too, the appellant has uploaded a ledger account wherein debit and credit transactions are reflecting but complete name of the customers and other details mainly the purpose of the money deposited has not been provided. Thus, I am of considered opinion that the appellant has failed to explain the source of cash of Rs. 22,37,511/- deposited in his bank account during the demonetization period. Therefore, the ground of appeal on this issue is dismissed and not allowed.

5. The ground no. 2 & 3 of the appeal are against the initiation of penalty proceedings u/s 271AAC(1) & 271A(1)(d) respectively. The initiation of these penalty proceedings are related to the addition made by the Id. AO u/s 69A which has already been upheld, thus, these grounds of appeal are also dismissed and not allowed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

“The appellant individual earns income from running of an E Mitra kiosk and undertaking transactions of money transfer, recharge of mobile , hotel and ticket booking on behalf of his customers. He receives money in cash from persons who are interested in paying their utility bills such as electricity bills, water bills, fees payments and interested in buying train tickets, hotel booking and transferring money from one location to other (which is prevalent particularly in people of Bihar who are employed in various houses and industries in Jaipur and who have to transfer money to their family persons at Bihar and the position of money transfer was very different from situation persisting at present) etc. which is deposited by him in his bank account and is transferred to various portals for above said purpose and in return the assessee earns commission from respective portal and from the person also.

For the year under consideration the appellant had filed his ITR on 01.06.2017 vide e filing acknowledgement no. 788438330010617 declaring a taxable income of Rs. 4,13,210/-. The case was selected for scrutiny on the basis of information about cash deposit of Rs. 56,01,800/- in his bank account during the demonetization period. Accordingly notice u/s 143(2) of the Income Tax Act, 1961 was issued on 29.09.2018 and further notices u/s 142(1) were issued which were complied with.

Order of the Id. AO :

During the proceedings the Id. AO verified that the bifurcation of above stated cash deposit of Rs. 56,01,800/- was comprised of two purposes viz. Payment for deposit of Electricity, Water bills etc. through E Mitra (Rs. 33,64,289/-) and payment for money transfer, hotel, ticket booking, mobile recharge etc. for Rs. 22,37,511/-. The Id. AO opined that deposit of Rs. 33,64,289/- stood verified whereas regarding balance sum of

Rs. 22,37,511/- the appellant failed to provide details about the persons whose money was deposited and for what purpose it was deposited and hence he taxed this sum of Rs. 22,37,511/- as unexplained credit of the assessee u/s 69A.

Order of the Id. CIT (A) :

An appeal was preferred against such order of the Id. AO wherein also he sustained the action of the Id. AO on the same logic.

Submissions before the Hon`ble Bench :

The appellant has placed following documents in support of his contention about genuineness of the cash deposit :-

1. Form 26AS (APB 6-9)
2. Summary of form 26AS (APB 10)
3. Transaction statement with Novapay Solutions (APB 96-99)
4. Agreement with Novapay Solutions (APB 94-95)
5. Bank account statements of the assessee (APB 11-92)

From the above documents it is amply proved that the assessee was engaged into the business of depositing utility bills and booking for hotels, railway tickets, money transfer, mobile recharge etc. against which he was paid commission by the respective companies and from customers also. Since the matter in this case revolves towards cash deposit in bank accounts during two months of demonetization only and hence the analysis of commission receipt during these two months is as under :-

SN	Name of Party	Commission	TDS
1.	EBIX Travels P Ltd.	400.00	20.00
2.	Novapay Solutions P Ltd.	16200.45	810.05
3.	Aksh Optifibre Ltd.	6144.00	308.00
4.	Oxigen Services India P Ltd.	1162.62	59.00
5.	EIH Associates Hotels Ltd.	2035.00	40.00
6.	Vodfafone M-Pesa Ltd.	97.97	4.90

From the above analysis it is very apparent that during these two months the assessee had carried both types of work viz. deposit of utility bills (through Aksh Optifibre) and Hotel and Ticket bookings (from other portals). The assessee had executed an Agreement with Novapay on 28.12.2016 which is a portal for money transfer mainly. The assessee was working for this portal earlier also but the quantum of commission was very low as is evident from the entries appearing in form 26AS. It is apparent from TDS made by above named Novapay that during the months of December 2016 to March 2017 the quantum of commission has recorded growth as compared to commissions in the months of April, 16 to November, 2016.

The bank statements of the assessee evidences that the amount deposited by the assessee in the bank accounts during these two months of demonetization was transferred to other accounts as is apparent from the transactions appearing therein.

An overall glance on enclosed documents evidences following facts :-

1. The assessee was engaged into the business of working as agent for depositing utility bills and other services such as Hotel Booking, Ticket Booking, Money transfer, mobile recharge etc.
2. It can not be presumed that the money transferred on various portals for above said purpose were incurred for personal use as in such situation TDS deductions would not have been there.
3. The assessee has declared his income from commission at 43.66% of gross commission earned by him for Rs. 9,96,782, whereas TDS had been deducted only on Rs. 3.97 Lacs which also evidences that the assessee was honest in declaring his income.
4. During this aforesaid period of two months of demonetization the assessee had deposited only Rs. 27,500 as SBN out of total deposit of more than 56 Lacs and there is no allegation against the assessee that the assessee had deposited amount in SBN. It is also pertinent to mention that for depositing utility bills the government had permitted to remit the money in SBN but no such action was undertaken by the assessee which again justifies his bona fides.
5. As a matter of fact the commission of the assessee to the extent of Rs. 19,896.04 (from companies other than Aksh Optifibre) was earned during the period of two months of demonetization. Even if we assume a bare rate of 1% on the transactions of hotel booking, ticket booking, mobile recharge, money transfer etc. carried by the assessee during these two months a sum of Rs. 19.90 Lacs stand verified and for rest of the amounts for which no TDS was deducted and the commission charged from customers balance deposit may be considered as reasonable and the addition so made by Id. AO may please be deleted.
6. Since the business quantum in terms of earning was very small, the assessee did not maintain any books of account having details about the persons whose money and for what purpose he took the money and where this amount was remitted. However an exercise has been carried with the transaction details as provided by Novapay company during the period from 16.12.2016 to 31.12.2016 which is enclosed at APB 100 & 101. This analysis shows that during this period the assessee had deposited Rs. 21,14,100 through his bank accounts (wherein also money had been deposited in cash) and there from he transferred a sum of Rs. 21,19,792 to various person as detailed in the analysis. Although this transfer includes Rs. 5,39,210 in the account of the assessee himself meaning thereby that a net amount of Rs. 15,80,582 had been transferred to other persons as per

directions of the customer. When for this period of 15 days only the assessee had transferred Rs. 15,80,582 to the account of others there can hardly be any doubt in considering that balance amount of Rs. 6,56,929 had also been utilized for the purposes of the customers only.

In view of above clinching evidences it can safely be presumed that the cash so deposited by the assessee was from genuine sources and did not pertain to the assessee and same had been received from his customers for utilization for above stated purposes. You are kindly requested to allow the appeal and oblige.”

6. In this appeal the Id. AR of the assessee submitted a detailed paper book containing the records against the contention so raised in the written submission and the index of the documents submitted reads as under :

Paper Book Index

SN	DESCRIPTION	PAGE NO.
1.	ITR V and Computation of Income of the appellant	1-5
2.	Form 26AS	6-9
3.	Summary of Form 26AS	10
4.	Bank Statement with Bank of Baroda	11-13
5.	Bank Statement with SBI — 11798 (for two months)	14-24
6.	Bank Statement with SBI — 34093 (for two months)	25-92
7.	Cash deposit in Bank Accounts summary	93
8.	Agreement with Nova Pay	94-95
9.	Transaction statement of Novapay for 16.12.16 to 31.12.16	96-99
10.	Summary of transactions with Novapay	100
11.	Partywise amount transfer details through Novapay	101

7. The Id. AR of the assessee in addition to the written submission vehemently argued that the when the activity of the assessee trust is considered and based on that even the commission income earned is taxed there is no justification to add the cash deposited into the bank account. The Id. AR of the assessee also submitted that the SBN deposited into the bank account were noted by the Id. AO that was for Rs. 27,500/- only and on that aspect of the matter there is no comments in the orders of the lower authorities. The Id. AO doubted only on the money collected on account of the activity done on E-Mitra with the help of M/s. Aksah Optifibre account and thereby ignored the fact that money so deposited were transferred to them and the Id AO has merely doubted on the details of the parties who gave the cash. The amount of collected in cash was ultimately transferred to M/s. Aksah Optifibre is not under dispute and therefore the commission income based on that cash deposit and then transferred to M/s. Aksah Optifibre cannot be added in the hands of the assessee.

8. The Id DR is heard who has relied on the findings of the lower authorities. The Id. DR submitted that the lower authorities have already considered the cash deposited based on the documents placed on record

and as regards the addition in the absence of details / evidence the addition is rightly made in the hands of the assessee.

9. We have heard the rival contentions and perused the material placed on record. The assessee earns income from running of an E Mitra kiosk and undertaking transactions of money transfer, recharge of mobile , hotel and ticket booking on behalf of his customers. He receives money in cash from persons who are paying their utility bills such as electricity bills, water bills, fees payments, buying train tickets, hotel booking and transferring money from one location to other which is deposited by him in his bank account and is transferred to various portals for above said purpose and in return the assessee earns commission. The case of the assessee was selected for scrutiny on the basis of information about cash deposit of Rs. 56,01,800/- in his bank account during the demonetization period. During the proceedings before the Id. AO the assessee submitted breakup of cash deposit of Rs. 56,01,800/- during the demonetization period. The amount deposited consists of deposit of money received for paying the Electricity, Water bills etc. through E Mitra (Rs. 33,64,289/-) and payment for money transfer, hotel, ticket booking, mobile recharge etc. for Rs. 22,37,511/-. The Id. AO opined that deposit of Rs. 33,64,289/- stood verified whereas

regarding balance sum of Rs. 22,37,511/- the assessee failed to provide details about the persons whose money was deposited and for what purpose it was deposited and hence he taxed this sum of Rs. 22,37,511/- as unexplained credit of the assessee u/s 69A. The Id. CIT(A) has confirmed the view of the Id. AO and stated that the ledger account submitted by the assessee consist of debit and credit entries but the purpose of money so received and the details thereof were not submitted therefore, he confirmed the order of the Id. AO. The assessee in the present appeal submitted that in support of the receipt of the cash he has placed on record the Form 26AS, (APB 6-9), Summary of form 26AS (APB 10), Transaction statement with Novapay Solutions (APB 96-99), Agreement with Novapay Solutions (APB 94-95) and Bank account statements of the assessee (APB 11-92). From all these evidences, already on record it clear that the money so taxed which is commission is based on the cash deposited into the bank account and on the account of availing the portal services by the various parties. The deposited of the cash into the bank account for SBN was only for Rs. 27,500/- and there is no doubt of the source of the same and for Rs. 22,37,511/- the assessing officer noted that as the assessee has not produced / furnished the details showing from whom cash was collected and for which purpose. On the issue of cash

deposit in bank accounts during two months of demonetization only and hence the analysis of commission receipt during these two months reflected in the form no.26AS is extracted here in below :

SN	Name of Party	Commission	TDS
1.	EBIX Travels P Ltd.	400.00	20.00
2.	Novapay Solutions P Ltd.	16200.45	810.05
3.	Aksh Optifibre Ltd.	6144.00	308.00
4.	Oxigen Services India P Ltd.	1162.62	59.00
5.	EIH Associates Hotels Ltd.	2035.00	40.00
6.	Vodafone M-Pesa Ltd.	97.97	4.90

From the above analysis it is very apparent that during these two months the assessee carried both types of work viz. deposit of utility bills and Hotel and Ticket bookings. The assessee had executed an Agreement with Novapay on 28.12.2016 which is a portal for money transfer mainly. The assessee was working for this portal earlier also, but the quantum of commission was very low as is evident from the entries appearing in form 26AS. It is apparent from TDS made by above named Novapay that during the months of December 2016 to March 2017 the quantum of commission has recorded growth as compared to commissions in the months of April, 16 to November, 2016. The bank statements of the assessee evidences that the amount deposited by the assessee in the bank accounts during these two months of demonetization was transferred to other accounts as is apparent from the transactions appearing therein. Thus, when the

assessee has is not directly benefit for cash deposit by making any personal investment but has transferred the money for services he rendered to the party whose service are availed and the commission arising out of that activity was already taxed in the hands of the assessee. The bench also noted that the activities of the assessee are genuine based on the fact that during the period of two months of demonetization the assessee had deposited only Rs. 27,500 as SBN out of total deposit of more than 56 Lacs and there is no allegation against the assessee that the assessee had deposited amount in SBN. Based on the discussion so recorded and evidences in the form of form no. 26AS bank statement and TDS deducted on commission the cash deposited by the assessee cannot be taxed u/s. 69A of the Act. Based on these observation the appeal of the assessee is allowed and we delete the addition of Rs. 22,37,511/- made by the Id. AO.

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

Order pronounced in the open court on 22/04/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/04/2024

*Ganesh Kumar, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sh. Govind Saini, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 629/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar