

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 4157/Mum/2023  
(Assessment Year: 2017-18)**

<b>Suraj Popatrao Wagh</b> Flat No. 104, B-Wing, Bldg. No. 2, Sai Balaram Complex, Kumbhakaran Pada Shivaji Nagar, Dombivali (West), Maharashtra-421102 <b>PAN : ABOPW4733D</b>	Vs.	<b>ITO-3(4)</b> 2 <sup>nd</sup> Floor, Rani Mansion, Murbad Road, Kalyan (O), Maharashtra-421306.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Ms. Naina Chaurasia, CA  
**Revenue/Respondent by** : Shri R.R. Makwana, JCIT

**Date of Hearing** : 23.04.2024  
**Date of Pronouncement** : 24.04.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 20.09.2023 for the AY 2017-18. The assessee raised the following grounds:

*1. The learned CIT(A) erred in law and on facts in sustaining/ confirming addition of Rs.14,72,300/- being cash deposited in the bank accounts during the demonetisation period as unexplained money u/s 69A of the Income Tax Act, 1961.*

*2. The learned Commissionaire of Income Tax (A) of erred in law and on facts in sustaining/ confirming addition of Rs.8,19,468/- being credits appearing in the bank account as unexplained investment as per the provisions of section 69 of the Income Tax Act, 1961.*

*3. The learned Commissionaire of Income Tax (A) erred in law and on facts in sustaining/ confirming addition of Rs.15,91,517/- being 10% of credits amounting to Rs.1,59,15,174/- as appearing in the bank accounts other than credits made during the demonetisation period as undisclosed income as per the provisions of the Income Tax Act, 1961.*

*4. In the facts and circumstances of the case and in law, the order passed by the Hon'ble CIT(A) u/s 250 of the Act, 1961 is invalid and bad in law as it was passed without providing adequate opportunity of being heard to the assessee*

2. The assessee is an individual engaged in the business of selling of motor bikes on commission basis to customers under the name and style of M/s. Sushila Motors. On the basis of information gathered during the online verification under "operation clean money" the Income Tax Department gathered a list of assesseees who had deposited cash in the bank account during demonetization period. As per the said information the Assessing Officer (AO) noticed that the assessee has deposited cash of Rs. 14,72,300/- during demonetization period into the bank namely Kotak Mahindra Bank and Bank of Baroda. The AO further noticed that the assessee has not filed the return of income for the AY 2017-18. The AO issued notices under section 142(1) of the Act through ITBA portal and have also issued manual notices to the address as per the records. The assessee in response to notice dated 21.09.2019 filed a letter seeking adjournment. However, the assessee did not file any further details and did not respond to last of the notices dated 29.11.2019 issued by the AO. Therefore, the AO completed the assessment under section 144 r.w.s. 143(3) of the Act, treating the entire amount deposited as income under section 69A of the Act. The AO based on the other credits in the bank accounts of

the assessee made various additions assessing the income of the assessee at Rs. 40,94,734/-. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A) also the assessee did not respond to the various notices issued and filed letters seeking adjournments. Since the assessee did not file any further details before the CIT(A), the CIT(A) confirmed the various additions made by the AO.

3. Before us, the ld. AR submitted that the assessee could not represent to the case properly before the lower authority for the reason that assessee's Chartered Accountant (CA) was not available to represent the case and that the assessee is not aware of the notices served through ITBA portal. The ld. AR filed an affidavit duly signed by the assessee before us.

4. The ld. DR on the other hand vehemently argued that the assessee did not appear before the AO and was seeking adjournments before the CIT(A) also. The ld. DR therefore, argued that the assessee did not cooperate with the proceedings before the lower authorities and therefore prayed that the additions be confirmed.

5. We have heard the parties and perused the material on record. The AO noticed that the assessee has made cash deposits during the demonetization period but has not filed the return of income. Since the assessee did not respond to the various notices issued by the AO the assessment was completed under section 144 r.w.s. 143(3) of the Act, wherein the AO made various additions based on credits in the bank statement. Even before the CIT(A) the assessee did not represent the case and therefore, the CIT(A) confirmed the additions. Before us an affidavit has been filed stating that the AR of the assessee was not available to represent the case and that the notices issued by the lower authorities have not been received by the assessee. Considering the facts and circumstances of the case and in the interest

of natural justice and fair play, we deem it fit to remit the case back to the AO for a denovo consideration of the case. The assessee is directed to file the relevant details before the AO without seeking adjournments and co-operate with the assessment proceedings. It is ordered accordingly.

6. In the result, the appeal is allowed for statistical purposes.

*Order pronounced in the open court on 24-04-2024.*

*Sd/-*  
**(ANIKESH BANERJEE)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**