

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 3736/Mum/2023 - A.Y. 2017-18

Shri Ravi Kumar Shyam Sunder Rai, Flat No. 6, Thames-1, Thames CHS, Godrej Hill, Barave Goan, Mumbai – 421 301.	Vs.	Deputy Commissioner of Income- tax, Circle-42(3) (1), Room No. 722, Kautilya Bhawan, BKC, Bandra East, Mumbai-400 051.
APPELLANT		RESPONDENT

Assessee by : Shri Aditya Ramchandran
Respondent by : Smt. Mahita Nair – (Sr. DR)
Date of hearing : 04/03/2024
Date of pronouncement : 25/04/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by Assessee is directed against the order of Commissioner of Income-tax (Appeals) - 46 (NFAC), Mumbai, dated 18.09.2023 for A.Y. 2017-18.

The following are the grounds of appeal raised by the assessee: -

On the facts and circumstances of the case and in law, the Ld. CIT (A) / NFAC erred in confirming the order of the Ld. Assessing Officer in adding cash deposits amounting to Rs. 40, 17,000/- u/s 68 of the Act, being cash deposit in old currency notes during the demonetization period without appreciating the fact that the appellant had sufficiently established the source of the same.

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) / NFAC erred in denying the benefit of municipal taxes paid by the appellant amounting to Rs. 6,62,000/- during the assessment year under consideration.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) / NFAC erred in not granting the appellant with the loss of Rs. 2,59,497/- towards the property declared as deemed let out by the appellant without appreciating the fact that the same was claimed in the return of income filed by the appellant.
3. On the facts and circumstances of the case and in law, the Ld. CIT(A) / NFAC erred in not granting the appellant with the loss of Rs. 2,59,497/- towards the property declared as deemed let out by the appellant without appreciating the fact that the same was claimed in the return of income filed by the appellant.

2. The brief facts of the case are that the assessee individual filed his return of income on 07.11.2017, declaring a total income of Rs. 99,76,780/-. Case of the assessee was selected for scrutiny and relevant statutory notices were issued. The assessee is a proprietor of M/s. Marine Medical Clinic, which operates in the field of treating all seafarers as well as shipboard patients suffering from various medical conditions related to seafaring. During the assessment proceedings AO made an addition of Rs. 40,67,000/- being amount of cash deposited in the bank during the demonetisation period and Rs. 3,31,000/- being amount of municipal taxes paid for the period when assessee was not the owner of property under consideration. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A), whom in turn partly allowed the appeal of the assessee by allowing Rs.

50,000/- u/s. 68 of the Act. Now the assessee being further aggrieved with the order of Ld. CIT (A) preferred the present appeal before us.

3. We have gone through the order of AO, Ld. CIT (A) and submissions of the assessee along with the grounds of appeal raised. Now we are proceeding to adjudicate the appeal ground wise. **Ground No. 1 pertains to additions of Rs. 40, 17, 000/- u/s. 68 of the Act being cash deposited in old currency notes during the demonetisation period.** It is observed that assessee deposited Rs. 40, 67,000/- in bank during the demonetisation period. It is observed that average of cash receipt for the year 2016-17 as a whole was Rs. 20,11,508/- whereas for the month of October 2016 it was Rs. 51,83,910/-. Closing Balances for last three months (August, September and October) were Rs. 23,66,697/-, 24,74,884/- and 37,78,294/- respectively.

4. It is also observed that books of maintained by the assessee u/s. 44AA of the Act were subject to audit u/s. 44AB of the Act and Tax Audit Report was produced before us along with a summary of cash book. Now the moot question before us to examine, is where the results of assessee's books have already been accepted by the department including the deposits for the month of August, September and October then how the deposits for the month of November being old currency notes can be added back in section 68 of the Act? Because out of addition of Rs. 40, 17,000/-, the assessee has Rs. 37, 78,294/- as opening balance as on 1-11-2016 (after depositing Rs. 44, 56,500/- in the month of October). Whatever the receipts assessee has during the year were duly deposited in the bank account and results were duly shown and offered for tax purposes. It is further noted that in terms of percentage also cash deposited during the year consideration was 40.04% of the total receipts as against 59.29% of the immediate preceding financial year.

5. The most important point which is to be noted is while going through the submissions of the assessee the total receipts of the assessee during the current period was Rs. 6,74,70,625/- against Rs. 3,83,34,743/- in the immediate preceding year. In current year cash receipts of the assessee out of Rs. 6,74,70,625/- was Rs. 2,44,98,100/- whereas in the immediate preceding year against the total receipt of Rs. 3,83,34,743/-, the assessee received fee in cash amounting to Rs. 2,27,27,970/-. So, in nutshell difference in total receipt was Rs. 2,91,35,882/- (67470625 – 38334743) against the difference of cash receipt of Rs. 17,70,130/- (2,44,98,100-2,27,27,970). It clearly demonstrates that higher turnover achieved by the assessee is not because of higher cash receipt and other findings of the AO are also baseless. Technically also, if this level of doubt AO had on the books of the assessee, he has to apply the provisions of section 145 of the Act to deduce the correct income.

6. The AO and Ld. CIT (A), substantially failed to make out any case against the assessee, rather it seems they failed to understand the facts of the case and purely on conjectures and surmises this addition has been made and further sustained by the Ld. CIT (A). Based on above, we agreed with the contentions raised by the assessee and are not inclined to sustain the addition made by the AO and sustained by the Ld. CIT (A). **In the result, Ground No. 1 raised by the assessee is allowed and AO is directed to delete the addition of Rs. 40,17,000/-.**

7. **The next ground of appeal pertains to denying the benefit of Rs. 6,62,000/- paid as municipal taxes during the year.** It is observed that during the year under consideration the assessee had paid Rs. 6,62,000/- as municipal taxes, Rs. 3,31,000/- each towards its property 406 and 408, Concorde Building, Sector – 11, Belapur, Maharashtra – 400 614. Both the flats

are on rent @ Rs. 20,000/- per month. However it is pertinent to mention here that this amount of municipal taxes on both the flats pertains to the period when assessee was not the owner of flats.

8. To analyse this issue we need to refer the relevant provision of the Act, i.e. section 23(1) of the Act as under:

“23. (1) for the purposes of section 22, the annual value of any property shall be deemed to be—

- (a) the sum for which the property might reasonably be expected to let from year to year; or*
- (b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or*
- (c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :*

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

Explanation.—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.”

9. Nowhere in the section there is any provision which speaks about that deduction can be claimed only by the original owner, rather it speaks about actual payment by the owner on payment basis. This section only restricts deduction based on due basis and allows on actual basis. There is no case of double deduction also, i.e. earlier the 1st owner took the benefit and now the assessee is claiming the same, because deduction under this section can be allowed only on actual payment basis. Fact of actual payment by the assessee

is not under challenge and we do not see any restriction in proviso to section 23(1) of the Act. Based on above, Municipal Taxes paid by the assessee even for the period when he was not the owner is allowable. **In the result, Ground No. 2 raised by the assessee is allowed and AO is directed to allow the same while computing total income of the assessee.**

10. Ground No. 3 pertains to not allowing the loss on property declared as deemed let out amounting to Rs. 2,59,497/-. It is observed that assessee claimed the same in his return of income filed, but there is no discussion about the same in assessment order and so in the order of Ld. CIT (A) also. As the issue has not been deliberated by the authorities below and there is no finding on the same, we restore the matter back to the file of AO for fresh hearing on this matter with a direction that a proper opportunity must be given to the assessee to substantiate his claim and assessee is directed to appear before the jurisdictional AO on this issue with relevant explanation/documents without seeking any adjournment. Based on above, issue is restored to the file of AO for fresh consideration. **In the result, this ground of appeal raised by the assessee is allowed for statistical purposes.**

11. In the result, appeal of the assessee is allowed for statistical purposes in above terms.

Order pronounced in the open court on 25th day of April 2024.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 25/04/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai