

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.4382/Mum/2023 (A.Y 2017-18)**

Narendra Khushalraj Kothari 275, Mapla Mahal, J.S. Road Thakurdwar Corner Mumbai 400004	Vs.	ACIT, Circle 5(3)(1) Room No. 573, 5 <sup>th</sup> Floor Aayakar Bhavan M.F. Road, Mumbai 400020
PAN/GIR No. : AACPK6517E		
Appellant	..	Respondent

Appellant by :	Shri Tanzil Padvekar
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	06.05.2024
Date of Pronouncement	06.05.2024

आदेश / O R D E R

**PER AMARJIT SINGH, AM:**

This appeal filed by the assessee is directed against the order passed by the CIT(A), NFAC, Delhi, which in turn arises from the assessment order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (the Act), dated 21.12.2019 for A.Y. 2017-18. The assessee has assailed the impugned order on the following grounds before us:

- “1. On the facts and in law, the Ld. Assessing Officer erred in making addition of Rs. 26,22,000/- under Section 68 of the Act, without appreciating the explanation offered by the Appellant Assessee.*

2. *On the facts and in law, the Ld. Assessing Officer erred in making addition of Rs. 26,22,000/- under Section 68 of the Act, of cash deposited into the bank Account, without following SOP issue by CBDT in Instruction No. 3/2017 dated 21.02.2017, which is binding on the Ld. Assessing Officer while making Assessment. On this account itself the impugned Assessment Order is bad in law and its liable to be quashed.*
3. *On the facts and in law, Ld. Assessing Officer failed to apply his mind to be facts of the case and evidence and explanation put before him at the time of scrutiny assessment. The Ld. Assessing Officer failed to verify earlier income and saving of Appellant Assessee. The he has also failed to appreciate that Appellant Assessee is a business man and had sufficient cash balance in previous year as well as withdrawal during the year. On this ground alone, the impugned addition shall be quashed.*
4. *On the facts and in law, the addition made under Section 68 of the Act of Rs.26,22,000/- is bad in law and ought to be deleted.*
5. *On the facts and in law, the Ld. CIT(A) erred in passing the impugned Order under Section 250 of the Act in gross violation of principles of Natural justice and hence, the Order passed by Ld. CIT(A) is illegal and bad in law.”*

2. The facts in brief are that the return of income declaring total income of Rs. 23,42,830/- was filed on 31.10.2017. The case was selected for limited scrutiny assessment and notice u/s. 143(2) of the Act was issued on 14.08.2018. During the course assessment the Assessing Officer (AO) noticed that the assessee had deposited Rs.26,22.000/- in cash in his bank account during AY 2017-18. Before the AO the assessee submitted that 9,37,000/- was on account of cash in hand which belong to his father, late Mr. Khulshalraj Kothari. Further the assessee explained that an amount of Rs.10,80,000/- was out of savings of past years and the remaining amount of Rs.6,04,500/- was withdrawn during AY 2017-18 before demonitisation period. However, the AO has not agreed with the submissions of the assessee. The assessee has not replied satisfactorily to the queries raised by the AO. Therefore, the AO stated that the cash

deposited during the demonitisation period was remained unexplained and the same was added to the total income of the assessee u/s. 68 of the Act.

3. The assessee appealed before the CIT(A). However, in spite of giving number of opportunities the assessee has not made compliance before the ld. CIT(A). Therefore, the ld. CIT(A) has dismissed the appeal of the assessee holding that the assessee was not interested in pursuing is appeal.

4. During the course appellate proceedings before us, the ld. Counsel for the assessee submitted that the AO has not considered the CBDT Instruction No. 3/2017 (F.No. 225/100/2017/ITA-II) dated 21.02.2017, which is a standard operating procedure required to be followed by the AO in verification of cash transactions relating to demonitisation period. The ld. Counsel also referred to various parts of the aforesaid CBDT Instructions which, he submitted, would have been followed by the AO. He further submitted that the AO has not fully considered the information and submissions filed by the assessee during the course of assessment proceedings.

5. On the other hand, the ld. D.R. supported the orders of the lower authorities.

6. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the ld. CIT(A) has passed an ex-parte order u/s. 250 of the Act holding that the assessee has not interested in pursuing the appeal since the he failed to make compliance to the notice issued for hearing during the course of appellate proceedings. It is noticed that neither the ld. CIT(A) has decided the appeal of the assessee on merits

after taking into consideration the material on record nor the assessee has made full compliance to the notices issued by the Id. CIT(A), considering the referring of the CBDT Instructions by the assessee at para 4 of this order, normally, whenever, any irregularity crept in the proceedings, then after removing the irregularity, proceedings is to be initiated from that stage, but by remitting the issue to the First Appellate Authority, we would be multiplying the litigation because the Id. CIT(A) would call for a remand report from the AO and the proceedings would commence on two stages, in order to avoid that situation we would deem it proper to set aside the order to the AO for deciding the issue de novo after taking into consideration the submission of the assessee and the instructions of the CBDT as referred to above by the assessee in his submission.

7. It is needless to say that the observations made by us will not injure or impair the case of the AO and will not cause any prejudice to the explanation of the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 06.05.2024.

Sd/-  
(VIKAS AWASTHY)  
Judicial Member

Sd/-  
(AMARJIT SINGH)  
Accountant Member

Place: Mumbai

Date: 06.05.2024

n.p

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.