

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 568/Ahd/2023

(निर्धारण वर्ष / Assessment Years : 2017-18)

The Income Tax Officer Ward -3(2)(1), Ahmedabad	बनाम/ Vs.	Rajeshkumar Ramjeebhai Desai 86-A-1, Rabari Vas, Village-Naz, Ta.-Daskroi, Ahmedabad, Gujarat 382425
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMCPD4213G		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri V.K. Mangla, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri S.N. Divetia, A.R. & Shri Samir Vora, A.R.

Date of Hearing	01/05/2024
Date of Pronouncement	17/05/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the Department against the order dated 31.05.2023 of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) for the Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is an individual and derives income by way of providing finance to various customers for purchase of motor vehicle in collaboration with MAS Financial Services Ltd. and Shriram Transport Finance Co. Ltd. The return of income for A.Y. 2017-18, was filed on 20.09.2017 declaring total income of Rs.10,72,770/-. The case was selected for scrutiny under CASS for verification of cash deposits during the year. The A.O. found that there was cash deposits of Rs.2,31,17,140/- made during the year in the bank account of the assessee. As the A.O. was not satisfied with the explanation for the source of this cash deposits, an addition of Rs.2,31,17,140/- was made U/s 69A of the Income Tax Act (hereinafter referred as the Act).

3. In first appeal, the addition as made by the A.O was deleted by the Ld. CIT(A) against which the Department is in appeal before us. The following grounds have been raised in this appeal:

1 (a) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,31,17,140/- made by AO u/s. 69A of the IT Act on account of unexplained credit transaction including cash deposits reflected in bank account.

(b) On the facts and circumstances of the case, Ld.CIT(A) ought to have upheld the order of the Assessing Officer.

(c) The appellant craves leave to add, alter and/or to amend all or any of the ground before the final hearing of the appeal.

4. Shri V.K. Mangla, Ld. Sr. D.R. submitted that the source of cash deposits in the bank accounts was not explained by the assessee in the course of assessment proceedings. Therefore, the Ld. CIT(A) was not correct in deleting the addition. He submitted that the Ld. CIT(A) had considered additional evidences filed by the assessee in the course of appeal to delete the addition without allowing any opportunity to the A.O. He strongly supported the order of the assessing officer.

6. Shri S.N. Divetia Ld. A.R. of the assessee assailed the order of the AO and contended that the addition was made without appreciating and disregarding the facts brought on record in the course of assessment proceeding. He explained that the source of cash deposits was already explained in the narrations as appearing in the bank statement as filed before the A.O. The assessee had also filed copy of the agreement with Shriram Transport Finance Co. Ltd. and with MAS Financial Services Ltd. in support of financing business, ledger account of the loanees with name, address, contact no.; vehicle details, amount of finance, rate of interest, RTC book etc. and had explained with example the modus operandi of his business and source of cash

deposits in the bank accounts. The Ld. A.R. submitted that the A.O. had made the disallowance for the reason that all the evidences in respect of paying in slips of Bank, collection/installment register, fund flow statement of deposits were not produced. He contended that the source of cash deposits was already explained by the evidences as filed before the A.O. which was not appreciated in right perspective. Regarding the evidences filed before the CIT(A), the Ld. AR explained that the assessee had only submitted supporting evidences in the form of PAN Number, confirmatory letter, RC book, appointment letter etc. before the Ld. CIT(A). He submitted that the Ld. CIT(A) had rightly deleted the addition after considering the evidences as already available before the Assessing Officer.

7. We have carefully considered the facts of the case and the materials on record. This is not a case of cash deposits during demonetization period. From the copy of bank statement brought on record, it is found that the cash deposits were made throughout the year and the cash deposits during demonetization period of 9th November 2016 to 30th December 2016 was Rs.13,08,140/- only. It is further found from the bank statement that the name of the party from whom the cash was received was also appearing in

the bank statement itself. To give an example, the cash deposits of Rs.64,415/- on 11.04.2016 in the bank statement is found to be received from the following nine parties:

<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch No.</i>	<i>Debit</i>
11-04-2016 To	(as per details)	Receipt	19	64,415.00
	Lalabhai Kanubhai Desai V 9081 Vj 66	9,200.00 Cr		
	Kalpnaben Dipakbhai Parmar Cx 8656 Vj 72	3,935.00 Cr		
	Hirenbhai Am utbhai Bharwad Mvj 25 V 7317	5,290.00 Cr		
	Kaniyasingh Ramsingh Rajput Mvj 47	6,875.00 Cr		
	Madhuri Dipakbhai Tiwari Fvj 134 Dy 4953	5,900.00 Cr		
	Kalpanben Dipakbhai Parmar Dv 8473 Fvj 59	7,865.00 Cr		
	Prakash Lakhansinh Gurjar Fvj 167 Cz 4088	7,000.00 Cr		
	Vijaykumar Shrikrishnadutt Pandey Fvj 216 V 7037	4,600.00 Cr		
	Dineshbhai Avdeshbhai Goswami Fvj 349	13,750.00 Cr		

8. Similar narration is found in respect of all other cash deposits as well as for payments appearing in the bank statements. The assessee had explained his business model before the A.O. that he was a franchise for providing finance of MAS Financial Services Ltd. and had entered into a revenue sharing agreement with Shriram Transport Finance Co. Ltd. The assessee was providing loan to the customers either out of its own funds or as a franchise of MAS Financial Services Ltd. and Shriram Transport Finance Co. Ltd. In case of lending out of its own funds, the assessee was spreading over the total amount of interest against tenure of the loan whereas in case of MAS FSL & Shriram Transport Finance Co the assessee was receiving a share of the interest. Under such business model and arrangement, it was obvious from the bank statement that the cash deposits appearing

in the account were on account of repayment of loans. The Assessing Officer had brushed aside the explanation of the assessee without making any enquiry from MAS Financial Services Ltd. and Shriram Transport Finance Co. Ltd. The rejection of the explanation on the ground that pay-in slips, collection/installment register, fund flow statement etc. were not produced is not found proper. The name of all the parties from whom the cash was received was already reflected in the bank statement. The observation of the A.O. that enormous amount of cash deposits was not commensurate with turnover as disclosed during the year also cannot be a reason to treat the cash deposits as unexplained.

9. The Ld. CIT(A) after appreciating the evidences as available before the AO and also the evidences as produced before him, has given the following findings:

The appellant has now furnished details like PAN number confirmatory letters, R.C. book resources for the amount received. The appellant also has furnished VAT returns, copy of agreement with Shri Ram Transport Finance Company Limited, evidencing that the amounts were received on behalf of the customers. The Assessing Officer primarily relied on the mis-match with the turnover and extent of cash deposits. The appellant has a modus operandi to provide finance to the customers for purchase of LMV auto rickshas. The appellant is under revenue sharing arrangements with Shri Ram Transport Finance Company Limited. The entire cash deposit in the bank account is in the form of instalments repaid by the borrowers, supportive evidence in this regard was furnished. The appellant has

offered income under presumptive taxation u/s 44AD of I.T. Act. The cash book pertaining to Financial Year 2016-17 is perused and the contentions of the appellant were found to be correct.

In addition, the appellant also has now furnished list of confirmatory letters from the customers who repaid loan instalments. In support of this claim confirmatory letters, PAN card, etc. were listed.

The appellant is relying on the judgment of Honourable Supreme Court in the case of Commissioner of Income Tax, U.P v. Bharat Engineering and Construction Co. (1972 ITR SC 83 187), where in the apex court opined that if the assessee in course of regular business has received advances, they are outside the preview of Section 68 of I.T Act

The Assessing Officer is all empowered to summon and verify genuinity and creditworthiness of the customers who have green advances. Mere identification of credits in the bank accounts cannot given a confirmatory conclusion that the deposits are unexplained.

When the appellant has given the names, addresses, account copies and VAT returns it's not appropriate to conclude that repaid instalments deposited in the form of cash are unexplained.

After examination of the confirmation letters of the customer who gave advances made and repayments, it is clear that name, address dive of advance and confirmatory statement, attaching the aadhar copy (I.D. proof) were furnished. The Assessing Officer has brushed aside all his data as stereotype and went on to make the addition. The Honourable Karnataka High Court in the case of Tam Tam Pedda Guruva Reddy vs JCIT And another 291 ITR 44 (Karn)

"Cash credit- Genuineness of transaction - Assessee to prove only identity of creditor mere Finding that amount in question is unexplained income Not acceptable - Addition on account of unexplained credit - Not justified"

In the case of CIT vs Rohini Builders 254 ITR 275 SC, the apex court has decided that if the assessee is engaged in business and has furnished details of the person from whom loan were taken, the amount credited cannot be treated as unexplained, until creditworthiness and genuinity are disproved.

In view of the submissions and confirmatory letters furnished from the customers as repayment of instalments and following ratio decidendi of judgments stated as above the addition of Rs.2,31,17,140/- made is treated as unjustified and is directed to be deleted.

10. It is found that the order of the Ld. CIT(A) is well-reasoned one after properly appreciating the facts of the case and evidences on record. We do not find any infirmity with the order of the Ld. CIT(A) and the additional evidences considered by him were only supporting evidences. When the assessee had brought on record the evidence regarding franchise arrangement with MAS Financial Services Ltd and revenue sharing agreement with Shriram Transport Finance Co. Ltd. before the AO, it was apparent that the cash deposits in the bank accounts of the assessee were in respect of the repayment of loans. The source of these cash deposits cannot be treated as unexplained in the absence of any enquiry from MAS Financial Services Ltd. and Shriram Transport Finance Co. Ltd and their denial of these arrangements. No evidence was brought on record by the AO to treat the deposits as unexplained. As the assessee had disclosed income under presumptive scheme u/s. 44AD of the Act he might not have maintained the books of account and fund flow

statement. Therefore, the action of the A.O. to treat the deposits as unexplained for the reason of non-production of fund flow statement, paying slips, collection register etc. was not correct. The assessee had already produced sufficient evidence to explain the source of cash deposits, which was not controverted by the A.O. The assessee had prima facie explained the source of cash deposits on account of repayment of loan and the name of the loanees was appearing in the bank statement itself. The A.O. did not make any enquiry to find fault with the explanation of the assessee. In view of above facts and discussions, we don't find any infirmity with the order of the Ld. CIT(A), which is upheld.

11. In the result, the appeal filed by the Revenue is dismissed.

This Order pronounced on 17/05/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER True Copy

Ahmedabad; Dated 17/05/2024

Rajesh

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

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

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad