

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3524/Del/2023

निर्धारणवर्ष/Assessment Year: 2017-18

Sanjiv Jain C-2/56, Ashok Vihar, Phase-II, New Delhi. PAN No.AAFPJ2233H	<u>बनाम</u> Vs.	ITO, Ward-11(3), C.R. Building, I.P. Estate, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by	Shri V.K. Bindal, CA & Ms. Rinky Sharma, ITP
राजस्वकीओरसे / Revenue by	Shri Om Parkash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	07.03.2024
उद्घोषणाकीतारीख/ Pronouncement on	22.05.2024

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals) - NFAC, Delhi dated 10.11.2023 for the AY 2017-18.

Assessee in his appeal raised the following grounds: -

1. *"The CIT(A) erred in law and on facts in confirming the addition of Rs.12,50,000/- u/s 68 of the Act as unexplained money alleging the demonetized currency of the said amount deposited in the regular bank accounts of the assessee during the relevant period ignoring the submissions and evidence placed on record. Thus, the addition so made should be deleted.*
2. *Without prejudice to the above ground, the CIT(A) also erred in law and on facts in confirming charge of*

the income-tax u/s 115BBE of the Act though there was no undisclosed income attracting the said charge. Thus, necessary directions should be issued to apply correct rate of tax as per the provisions of law if at all necessary.

3. *The impugned assessment order has been passed by the AO without giving any notice u/s 129 of the Act to the appellant on change of incumbent Assessing Officer. Thus, the said void ab initio order must be quashed.*
4. *The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”*

2. Brief facts are that the assessee who is an individual deriving income from salary as a Director of the Company from M/s Hill Height Hotels Pvt. Ltd. filed his return of income on 13.02.2018 declaring income of Rs.18,11,010/-. The case was selected for scrutiny under CASS to verify the large cash deposits made into bank account. Accordingly, the Assessing Officer in the course of assessment proceedings issued notices requiring the assessee to justify and explain the source for cash deposits of Rs.12,50,000/-. In response to the notices the assessee furnished replies stating that the deposit of cash into bank account is out of cash balances available with the assessee throughout the year. It was also explained that cash was accumulated to perform his daughter's marriage but as the

marriage did not materialize the assessee has deposited the cash into bank account. The explanation of the assessee was not accepted by the AO stating that the assessee did not submit any evidence in support of his claims.

3. On appeal the Ld. CIT(A) sustained the addition observing that the assessee did not produce any bank statements, cash flow statements before the AO as well as before him.

4. Before me the Ld. Counsel for the assessee referring to page 24 of the Paper Book which is the letter dated 07.11.2019 filed before the AO submits that the assessee has furnished all the bank statements namely City Bank, ICICI Bank and Syndicate Bank. The statement of HDFC Bank was already submitted before the AO. Ld. Counsel further submits that statement of cash flow/cash summary for the financial years 2015-16 and 2016-17 were also submitted. Ld. Counsel submits that in the letter submitted before the AO it was explained that assessee had cash balances all the time and the same was deposited in bank account. It was also explained that assessee withdrew cash from the bank whenever he needed and the same was deposited from time to time. It was also explained that there was no cash loan transaction. Therefore, it was submitted that

the cash deposit is very much out of cash balances available with the assessee throughout the year.

5. Ld. Counsel further referring to page 72 of the PB which is the letter dated 23.12.2019 furnished before the Assessing Officer, submits that assessee explained that he had withdrew Rs.50,000/-, 10,000/- and 5,00,000/- on 28.10.2016, 29.10.2016 and 01.11.2016 which are the immediate withdrawals before the demonetization which was announced on 08.11.2016, Ld. Counsel submits that the said amount was deposited after 08.11.2016 Ld. Counsel also further referring to page 70-71 which are the cash flow statements for the FYs 2015-16 and 2016-17 submits that the assessee was having opening balance of more than 21,00,000/- and during the year he has withdrawn Rs.45,23,000/- from HDFC Bank and deposited Rs.53,37,000/- in HDFC Bank Ltd. Assessee also withdrew Rs.1,84,500/- from ICICI bank Ltd. and Rs. 3,00,000/- from the company for expenses and the closing balance of cash as on 31.03.2017 stood at 15,37,984/-. Therefore, the Ld. Counsel submitted that the assessee has furnished all the details i.e. bank statements, cash flow statements and the explanation was given that these cash deposits were made out of cash balances available with the

assessee and also from withdrawals from the bank account just before the demonetization. It is submitted that the explanations were not accepted by the lower authorities without any justification. Therefore, the Ld. Counsel prayed for deletion of the addition made by the Assessing Officer.

6. Heard rival submissions, perused the orders of the authorities below and the materials placed before me. On reading of the assessment order as well as the Ld. CIT(Appeals) order, it is observed that the explanation of the assessee was not accepted on the ground that the assessee has not furnished any supporting evidences to explain the cash deposits. However, letters dated 07.11.2019 and 23.12.2019 along with cash flow statements and bank statements which were furnished before the AO clearly show that the assessee has given explanation along with evidences in support of his claim that these cash deposits were made out of opening cash balances and withdrawals from the bank accounts. The AO as well as the Ld.CIT(A) brush aside the contentions and evidences furnished by the assessee. The evidences clearly show that the assessee is having sufficient cash balances at his hand which were used for deposit during demonetization period. The bank statement of

HDFC Bank clearly shows that the assessee had in fact withdrew Rs.50,000/-, 10,000/- and 5,00,000/- on 28.10.2016, 29.10.2016 and 01.11.2016 respectively just before the demonetization which is part of cash deposit of Rs.12,50,000/- made by the assessee on 17.11.2016. The assessee has clearly explained with evidences that the cash deposit of Rs.12,50,000/- made on 17.11.2016 was out of cash balances available with him and also from the cash withdrawals from the bank account. The AO is not justified in making addition on the ground that the assessee has not furnished proper explanation with evidences when in fact the assessee did furnish all the information before the AO.

7. In the circumstances, the AO is directed to delete the addition made u/s 68 of the Act in respect of cash deposit made during demonetization period. Grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 22/05/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 22.05.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi