

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

**Before**

**Dr. Manish Borad, Accountant Member**

**&**

**Shri Pradip Kumar Choubey, Judicial Member**

**I.T.A. No.949/KOL/2023**

**Assessment Year: 2017-18**

Sanwar Mal Agarwal C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2 <sup>nd</sup> Floor, Kolkata- 700069. (PAN: ACLPA6981H)	<b>Vs.</b>	ITO, Ward-50(3), Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appearances by:**

*Shri Siddharth Agarwal, Advocate appeared for the Appellant*

*Shri L. N. Dash, Addl. CIT (DR) appeared for Respondent.*

Date of concluding the hearing : 08.05.2024

Date of pronouncing the order : 28.05.2024

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the “Act”) by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 17.08.2023 arising out of the assessment order passed u/s 143(3) of the Act by ITO, Ward-50(3), Kolkata (in short “AO”), dated 23.12.2019.

2. Grounds of appeal raised by the assessee read as under:

*“1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the addition on account of alleged unexplained money of Rs.16,75,000/- made u/s. 69A of the Act.*

2. For that the Ld. CIT(A) failed to appreciate that the aforesaid deposit of rs.16,75,000/- in the bank account was out of opening cash balance as on 01.04.2016.

3. The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual and declared income of Rs.7,67,510/- in the return for AY 2017-18 furnished on 20.09.2017. Case selected for limited scrutiny for the reason “cash deposit during demonetization period”. Statutory notices u/s. 143(2) and 142(1) of the Act were duly served upon the assessee. During the course of assessment proceedings, Ld. AO observed that total cash deposited during the year in the bank account held with Karur Vysya Bank, Burra Bazar is Rs.25,75,000/- out of which Rs.16,75,000/- has been deposited during the demonetization period from 10.11.2016 to 30.12.2016. The assessee was show caused to explain the source of cash deposit of Rs.16,75,000/-. It was stated that there was opening cash balance as on 01.04.2016 at Rs.22,53,590/- and that the assessee had declared Rs.5,00,000/- as undisclosed cash in the Income Declaration Scheme, 2016 (IDS), thus there was sufficient cash in hand to explain the alleged cash deposit. However, Ld. AO was not satisfied and observed that for the AY 2016-17 assessee had offered unexplained income of Rs.16,00,000/- but the return was submitted on 24.02.2017 i.e. after the demonetization scheme but the said sum was deposited during the demonetization period and, therefore, it was an afterthought and it is not possible that assessee kept the money idle for such a long time. Accordingly, addition of Rs.16,75,000/- made for unexplained cash deposit u/s. 69A of the Act and income assessed at Rs.24,42,510/-.

4. Aggrieved, assessee preferred appeal before the Ld. CIT(A) and reiterated the submissions and also furnished various documents including cash book for the current year as well as the preceding year,

copy of IDS declaration etc. However, Ld. CIT(A) after considering the details summarily confirmed the addition made by the AO. Aggrieved, assessee is now in appeal before this Tribunal.

5. Ld. Counsel for the assessee filed a paper book containing 42 pages on 26.10.2023 explaining in detail the source of the alleged cash deposit which is claimed to be mainly from the opening cash in hand as on 01.04.2016 as well as the cash declared in the IBD scheme. Reference was also made to the written submission forming part of the paper book placed at pages 36 to 42 which were filed before the Ld. CIT(A).

6. On the other hand, Ld. CIT, DR vehemently argued supporting the orders of both the lower authorities and stated that though the cash was deposited during demonetization period but the assessee had intentionally offered it as income for the preceding assessment year.

7. We have heard rival submissions, carefully perused the material available on record and carefully gone through the details furnished before us. The only issue for our consideration is that whether Ld. CIT(A) erred in confirming the addition for unexplained cash deposit during demonetization period at Rs.16,75,000/-. Our examination is confined to that whether the assessee had successfully explained the source of alleged cash deposit. We note that during the year assessee had deposited total cash of Rs.25,75,000/- of which Rs. 9,00,000/- had deposited prior to demonetization period and the remaining amount had deposited during demonetization period. Ld. AO has not doubted the genuineness of cash deposit of Rs. 9,00,000/- during pre demonetization period. According to the Ld. Counsel for the assessee, the source of the alleged cash deposit is firstly from the opening cash

in hand as on 01.04.2016 i.e. Rs.22,53,590/-. Now for verifying this opening balance, we have turned down to page 7 of the paper book which shows the detail of cash book for FY 2015-16. In the cash book for FY 2015-16, we note that in addition to the opening balance as on 01.04.2015 at Rs.3,34,090.57 there is cash withdrawal of Rs.4,00,000/- from the bank account and Rs.16,00,000/- is cash income offered for tax during the year and there is minor withdrawal of Rs.18,500/- during the year. Now major amount in the cash book for FY 2015-16 is cash of Rs. 16,00,000/-. The assessee has filed a copy of income tax return for AY 2016-17 which is placed in the paper book page 22. The total income shown there is Rs.58,00,390/- and the return has been furnished on 14.02.2017. Though this return is belated but it is a valid return and assessee has duly offered the income of Rs.16,00,000/- earned in cash (included in total income of Rs.58,00,390/-) and has paid due taxes thereon. Both the lower authorities have doubted this action of the assessee but we fail to find any merit in the finding of both the lower authorities because the assessee had filed the return as per the provision of section 139(4) of the Act, which provides for filing belated returns. Though the demonetization scheme was declared during FY 2016-17 and the due date for filing the return for AY 2016-17 already stood expired before the declaration of demonetization scheme. Assessee was not having any idea that any such scheme can be declared. Assessee had not filed the return u/s. 139(1) because it had sufficient time u/s. 139(4) of the Act to file the return upto 31.03.2017. Assessee has travelled well within the four corners of law and had declared the income for FY 2015-16 in the return furnished on 14.02.2017 and, therefore, there is a valid source of cash of Rs.16,00,000/- in the hands of the assessee which is forming part of the opening cash in hand as on 01.04.2016. Further, we note that assessee had also declared Rs. 5,00,000/- as

undisclosed cash in the IDS 2016 wherein along with the undisclosed cash assessee had offered other income also. Thus, both the contentions of Ld. Counsel for the assessee about the source of alleged cash deposit are found to be correct. Therefore, we are inclined to hold that since there was sufficient cash in hand available with the assessee for depositing the alleged cash no addition u/s. 69A of the Act is called for. Accordingly, finding of the Ld. CIT(A) is set aside and addition of Rs.16,75,000/- u/s. 69A of the Act is deleted.

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

Order is pronounced in the open court on 28<sup>th</sup> May, 2024.

Sd/-  
[Pradip Kumar Choubey]  
Judicial Member

Sd/-  
[Dr. Manish Borad]  
Accountant Member

Dated: 28<sup>th</sup> May, 2024

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

1. **Appellant** –
2. **Respondent** –
3. CIT(A), NFAC, Delhi
4. CIT
5. Departmental Representative
6. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches