

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, 'एस. एम. सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 252/Ahd/2024
Assessment Year : 2017-18

Abhishek Ashokkumar Jain 1 Bharatnagar Society, Sahapur Dudheshwar, Ahmedabad-380004 Gujarat	Vs	The Income Tax Officer Ward-1(2)(1), Ahmedabad
PAN: APRPJ3999P		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Vinit Mundra, AR
Revenue by :		Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/05/2024
घोषणा की तारीख /Date of Pronouncement: 30/05/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

This appeal by the Assessee is directed against the order dated 19-12-2023 passed by the Additional/Joint Commissioner of Income Tax (Appeals)-7 Kolkata (hereinafter referred as "CIT(A)", which dismissed the appeal against the order of the Assessing Officer (hereinafter referred as "AO") adding cash deposits in the bank during the demonetization period as unexplained cash under section 68 r.w.s 115BBE of the Income Tax Act, 1961 (hereinafter referred a "the Act") for the A.Y. 2017-18.

2. Assessee has raised the following Grounds of the appeal:

1. In his order dated 28/12/2019, the Ld. AO has erred in law by making an addition of Rs.5,16,500 u/s 68 r.w.s. 115BBE of the Income Tax act without identifying the facts of the case and real nature of transactions involved. The Ld. CIT A has erred in law by confirming the same.

2. Any other facts and grounds will be submitted at the time of hearing

Facts of the Case:

3. The Assessee filed its return of income for the assessment year 2017-18 declaring total income of Rs. 3,03,940/-. The case was selected for limited scrutiny through CASS. A notice u/s 143(2) and 1432(1) was sent to the assessee who filed the replies online using e-filing portal. The Assessee deposited cash amounting to Rs. 23,60,770 in the bank account during 9-11-2016 to 31-12-2016. Out of the total deposit Rs. 5,16,500 was out of the balance with the assessee, as claimed by the assessee.

4. During the course of assessment, the assessee explained that out of Rs. 5,16,500 Rs.1,80,000 was belonging to his mother who is 58 years old and could not deposit the same in her bank account and remaining amount of Rs. 3,36,500 was opening cash balance as per the cash book of his business.

4.1. In response to the show cause notice dated 10-12-2019 issued by the AO, the assessee submitted following documents:

1. Cash book for the financial year 2016-17
2. Daily sales report for the month of November 2016
3. Copy of bank statement indicating cash withdrawals of Rs.30,000
4. Confirmation letter from mother

5. The AO treated the cash deposit as unexplained under section 68 of the Act and added it to the total income of the Assessee. While doing so he concluded that the assessee failed to submit the copy of cash book evidencing the opening balance and since the assessee was withdrawing cash from bank on regular basis there is no need for such cash.

5.1. The Ld. Counsel for the assessee submitted that the assessment order finalized by the AO was based on certain verifications, yet there were discrepancies in the total income as per the order of the AO. The Ld. Counsel explained the fact that the necessary submissions like computation of income, ledger account extracts of NPA provisions were made to the AO with the help of documentary evidence. The Ld. Counsel for the assessee claimed that Ld.CIT(A)'s order was passed *ex-parte* without giving to the assessee a fair opportunity to present their case due to the erroneous communication channel.

6. Aggrieved by the order of the AO, the Assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal, upholding the AO's addition, on the ground that the source of the cash deposit remained unexplained.

7. Aggrieved by the order of the CIT(A), the Assessee is now in appeal before us.

7.1. The learned Authorized Representative (AR) for the Assessee submitted that the AO and the CIT(A) failed to consider the cash book submitted as evidence of the source of the cash deposit. The assessee is in the business of mobile re-charge for Telenor India Communications Pvt. Ltd., and he is regularly collecting cash from his customers and depositing

in the bank account in the name of Siddharth Marketing to pay the amounts to Telenor India Communications Pvt. Ltd. To support his claim the AR submitted sample copies of invoice from the company and correlated it with payments. He also submitted the affidavit of the Assessee's mother declaring that she had given her personal savings to deposit the same in bank account as she was unable to do so. The AR argued that the cash deposit was duly explained, and the addition under section 68 was unwarranted.

8. The learned Departmental Representative (DR) relied on the order of lower authorities.

9. We have heard the rival submissions and perused the material on record. It is observed that the Assessee submitted an affidavit from the Assessee's mother confirming that she had handed over the cash to the Assessee for deposit in the bank. The Assessee also provided a cash book to substantiate the source of the cash deposit. These pieces of evidence were not duly considered by the AO, especially cash book which was submitted at the time of assessment. The AR also submitted the cash summary of the cash book giving monthly opening balance, cash received, cash deposits, cash withdrawn from bank account and cash expenses to arrive at closing balance.

10. The affidavit of the Assessee's mother is a valid piece of evidence, and in the absence of any contrary evidence or findings, it should not be disregarded. Moreover, the cash book submitted by the Assessee supports the explanation provided. The AO's action of disregarding this evidence

and making an addition under section 68 r.w.s 115BBE without proper verification is not justified.

11. In view of the above discussions, we are of the considered opinion that the Assessee has satisfactorily explained the source of the cash deposit. Therefore, the addition made by the AO under section 68 r.w.s. 115BBE of the Act is not sustainable.

12. In the result, the appeal of the Assessee is allowed, and the addition made by the AO is hereby deleted.

Order pronounced in the Open Court on 30 May, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER *True Copy*
Ahmedabad, Dated 30/05/2024

Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER

Rajesh

आदेश की प्रतिलिपि अग्रेषित/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)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad