

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 59/Kol/2024
Assessment Year: 2017-18

Shri Alok Kumar Maiti C/o M/s. Salarpuria Jajodia & Co. 7, C.R. Avenue 3 rd Floor Kolkata - 700072 [PAN : AVIPM5608H]	Vs	Income Tax Officer, Ward - 27(2), Haldi
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Jhajharia, FCA
Revenue by :	Shri Arup Chatterjee, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 07/05/2024
घोषणा की तारीख /Date of Pronouncement: 03/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the Learned National Faceless Appeal Centre (hereinafter the "ld. CIT(A)") dt. 21/09/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:-

1. *That on the facts and on the circumstances of the case, the order passed by the CIT(A), (NFAC), Delhi, dated 21.9.2023, is bad in law, illegal and abinitio void and the same is liable to be cancelled / set aside / quashed.*
2. *That on the facts and on the circumstances of the case, both the AO as well as the CIT(A), had grossly erred in deciding the cases ex-parte and without providing proper opportunity to represent the case.*
3. *That on the facts and on the circumstances of the case, the CIT(A) had grossly erred in not deciding the case on merits.*
4. *That on the facts and on the circumstances of the case, the CIT(A) had grossly erred in upholding the action of the AO by wrongly and illegally treating the entire cash deposit of Rs. 10,10,000/- treating the same as unexplained money under section 69 A of the Act.*

5. *That on the facts and on the circumstances of the case, the CIT(A) had grossly erred in upholding the action of the AO by wrongly and illegally treating the entire interest amount of Rs. 3,40,000/- as income from other sources.*

6. *That on the facts and on the circumstances of the case, the CIT(A) had grossly erred in upholding the action of the AO by wrongly and illegally treating the entire investment of Rs. 3,50,000/-, treating the same as unexplained investment under section 69 of the Act.*

7. *That the appellant craves leave to alter or amend or rescind or prefer additional grounds before or at the time of the hearing of the Appeal."*

3. Facts in brief are that the assessee is an individual and is a retailer of vegetables and owner of vehicles. He did not furnish regular return of income. Based on the information under 'Operation Clean Money', it was noticed that the assessee had deposited substantial cash during the demonetisation period. Notice u/s 142(1) of the Act was issued to furnish true and correct income. The assessee failed to do so. Accordingly, the Id. Assessing Officer proceeded to frame best judgment assessment u/s 144 of the Act, since the assessee failed to comply to the notice u/s 142(1) of the Act. The assessee has been maintaining account with CCBL Main Branch from which it was noticed that the assessee had deposited Rs.10,10,000/- during FY 2016-17. The same was added in the hands of the assessee u/s 69A of the Act. It was also noticed that the assessee had earned interest income of Rs.3,40,776/- which has not been disclosed and since the assessee had not filed any return, the same was also added in the hands of the assessee. Information was gathered that the assessee had made fixed deposit of Rs.3,50,000/- in cash during FY 2016-17 and on account of lack of any information from the side of the assessee the same was also added. The Id. Assessing Officer after giving the benefit of u/s 80TTA

of the Act at Rs.10,000/-, framed the best judgment assessment assessing income at Rs.16,90,776/-. Aggrieved assessee preferred appeal before the Id. CIT(A) but on account of regular non-compliance, the Id. CIT(A) dismissed the appeal.

4. Now, the assessee is in appeal before this Tribunal.

5. The Id. Counsel for the assessee prayed for restoring the issues to the file of the Id. Assessing Officer for fresh examination and also submitted that the source of fixed deposit of Rs.3,50,000/- is out of the cash deposits during the year and, therefore, there is a double addition. So far as the interest on FDR is concerned, the Id. Counsel for the assessee fairly accepted that the same deserves to be added as income in the hands of the assessee. He also stated that the assessee deals in vegetables and the cash deposited during the year is part of his turnover and, therefore, only profits can be estimated.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

6. We have heard rival contentions and perused the material placed before us. We find that the assessee had not participated in both the proceedings before the lower authorities. Admittedly, the assessee has deposited cash of Rs.10,10,000/- during the year. Source of the same has not been explained before the lower authorities but it is contended that it is out of the gross receipts from the sale of vegetables. We also note that during the year assessee had made fixed deposit of Rs.3,50,000/- in cash. The Id. Assessing Officer had made the addition for both the cash deposit of Rs.10,10,000/- and the fixed deposit of Rs.3,50,000/-. It is

claimed by the Id. Counsel for the assessee that source of FDR is out of the cash deposited in the bank during the year.

7. Considering the contention of the Id. Counsel for the assessee, we restore the matter to the file of the Id. Assessing Officer to examine the bank statement and in case it is found that out of the cash deposited of Rs.10,10,000/-, assessee has utilized a sum of Rs.3,50,000/- in making fixed deposit then in that case, no separate addition of Rs.3,50,000/- would be called for. As far as the remaining cash deposits is concerned, the Id. Assessing Officer shall give fair opportunity to the assessee to present its case as to whether balance cash of Rs. 6,60,000/- is part of the gross business receipt on which profit percentage has to be applied or its total income. The Id. Assessing Officer should also examine as to whether the assessee has made withdrawals of cash during the year and then decide the issue in accordance with law. So far as the issue relating to addition u/s 69 of Rs.3,50,000/- and u/s 69A of Rs.10,10,000/- are concerned, we restore the issues to the file of the Id. Assessing Officer to adjudicate as per the directions given above and the effective grounds raised on this issue are allowed for statistical purposes.

As far as the interest income on FDR of Rs.2,79,832/- and net income from Savings bank account interest (excluding deduction u/s 80TTA at Rs.10,000/-), the remaining amount of Rs.3,30,776/- has rightly been added in the hands of the assessee as it is purely an interest income on Savings bank account and FD which has not been offered to tax by the assessee and, therefore, the addition made is confirmed.

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

Order pronounced in the Court on 3rd June, 2024 at Kolkata.

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 03/06/2024

**SC Sp/8*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata