

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

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

ITA No.286/Ahd/2024
Assessment Year : 2017-18

Sainik Seva Services 132, Ft. Ring Road Near Ashwamegh Bungalows IOCL Petrol Pump, Satellite Ahmedabad - 380 015 (Gujarat)	Vs	The Dy. CIT Circle-3(1)(1) Ahmedabad-380 014
PAN: ACAFS 8028 C		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sakar Sharma, CA
Revenue by :	Smt. Malarkodi R., Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/06/2024
घोषणा की तारीख /Date of Pronouncement: 21/06/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order of the Ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as "the Ld.CIT(A)"), dated 19-01-2024, confirming the addition made by the Assessing Officer (AO) under section 69A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in respect of cash deposits amounting to Rs.56,02,118/- during the

demonetization period, taxed under section 115BBE of the Act, in the assessment order passed u/s.143(3) of the Act, dated 24-12-2019 for the Assessment Year (AY) 2017-18.

Facts of the Case:

2. The assessee is a firm engaged in the business of running a petrol pump. The assessee filed its return of income for the AY 2017-18 on 29-10-2017, declaring a total income of Rs.56,28,610/-, which was processed under section 143(1) of the Act. The case was selected for scrutiny under the Computer Assisted Scrutiny Selection (CASS). Notices under sections 143(2) and 142(1) of the Act were issued to the assessee.

2.1. During the course of the assessment proceedings, it was observed that the assessee had deposited cash amounting to Rs.12,89,14,525/- during the demonetization period, out of which Rs.56,02,118/- was stated to be received from debtors. The AO issued a show-cause notice to the assessee. In response thereto, the assessee submitted the names, addresses, and PANs of the debtors from whom the cash of Rs.56,02,118/- was received but failed to file confirmations from such debtors.

2.2. The AO, referring to the RBI Circular which stated that the assessee was not authorized to accept old notes of Rs.500/- and Rs.1000/- and, accordingly, added Rs.56,02,118/- as unexplained cash under section 69A of the Act.

3. The assessee filed an appeal before the Ld.CIT(A) and submitted additional evidence. The Ld.CIT(A) concluded that the transactions relating to cash received from debtors did not qualify for exemption as per the RBI Circular and confirmed the addition made by the AO.

4. Aggrieved by the order of the Ld.CIT(A), the assessee preferred an appeal before us with following grounds of appeal:

- "1. The Ld. CIT (A) erred on facts and in law in sustaining addition u/s 69A without appreciating that the assessee maintains books of accounts and, therefore, provisions of section 69A have no application in the case of the assessee, more particularly, when book results have not been rejected U/s 145(3).*
- 2. The Ld. CIT(A) erred on facts and in law in upholding the order of AO making addition of Rs. 56,02,118/- by invoking provisions of section 69A with reference to cash realised during demonetization period from the debtors.*
- 3. The Ld. CIT (A) erred on facts and in law in upholding the action of the Assessing Officer invoking deeming provisions u/s 69, 69A etc and applying higher rate of taxation thereon u/s 115BBE without appreciating that assessee was subjected to search and seizure action much before the introduction of Taxation Laws (Second Amendment) Act, 2016 w.e.f. 15-12-2016 and therefore, higher rate of taxation was not applicable in the case of the assessee as held by Hon'ble Indore Bench of the Tribunal."*

On the grounds of appeal:

5. The Ld.Authorised Representative (AR) for the assessee contended that the assessee maintains books of accounts, which have been audited

under section 44AB of the Act. It was argued that section 69A of the Act has no application when the assessee maintains proper books of accounts, and the books maintained by the assessee have not been rejected under section 145(3) of the Act. Reliance was placed on the Tribunal's decision **in the case of Rahul Maheshwari vs ITO in ITA No. 267/ND/2023 dated 15-01-2024**. The Ld.AR further stated that the assessee also maintained quantity records, which have not been disputed. The addition made was for receipts from debtors for the entire year and not specifically for the demonetization period. The Gross Profit (GP) and Net Profit (NP) rates are comparable with earlier years. The details of cash sales, cash received from debtors, and cash deposited in bank accounts were provided in response to the notice under section 142(1) of the Act for the year under appeal as well as for the immediately preceding assessment year.

5.1. The assessee further contended that the demonetized currency was a legal tender until 30-12-2016, referring to Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017.

5.2. It was argued that the higher rate of taxation under section 115BBE of the Act was not applicable in the case of the assessee as the search and seizure action occurred before the introduction of the Taxation Laws (Second Amendment) Act, 2016 w.e.f. 15-12-2016, as held by the Hon'ble Indore Bench of the Tribunal.

5.3. Upon examining the facts and submissions, it is observed that the assessee has maintained proper books of accounts, which have been audited and not rejected under section 145(3) of the Act. Therefore, the provisions of

section 69A of the Act are not applicable as the books of accounts reflect the cash transactions. The cash deposits amounting to Rs.56,02,118/- were stated to be received from debtors, and the assessee provided details such as names, addresses, and PANs of these debtors. The assessee also submitted confirmations from the debtors as an additional evidence before the Ld.CIT(A) who admitted the same. The AO's reliance on the RBI Circular is noted. However, the currency in question was a legal tender until 30-12-2016, and the business transactions during this period cannot be outrightly disregarded.

5.4. In a similar case of **Ashapura Petroleum Marketing P Ltd. in ITA No. 511/Ahd/2020 dated 18-10-2023**, as relied by the assessee, it was held that where the assessee maintains proper books of accounts and the transactions are recorded therein, section 69A of the Act may not be applicable unless the cash transactions are proved to be unexplained or fictitious.

5.5. In light of the above observations and judicial pronouncements, we find merit in the assessee's submissions. The addition of Rs.56,02,118/- under section 69A of the Act is not justified as the assessee has maintained proper books of accounts, which have not been rejected, and the transactions are duly recorded.

6. Regarding Ground No.3 of the assessee, about the applicability of section 115BBE of the Act, it is concluded that provisions of 115BBE of the Act has no application once the addition u/s 69A of the Act is deleted.

Therefore, this ground of assessee's appeal is not adjudicated.

7. Accordingly, the addition made by the AO and confirmed by the Ld.CIT(A) is deleted. The appeal filed by the Assessee is partly allowed.

Order pronounced in the Open Court on 21 June, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 21/06/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

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,

सत्यापित प्रति //True Copy//

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