

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

**ITA No. 4158/Mum/2023
(A.Y. 2017-18)**

Mohd. Sadiq Safi Khan Room NO. 71, Razzak Chawl, Kherwadi, Bandra East, Mumbai-400051	Vs.	ITO-23(2)(3) Piramal Chambers, Lalbaug, Mumbai-400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHPK4751D		
Appellant	..	Respondent

Appellant by :	Shri Devendra Jain
Respondent by :	Shri Nagnath Pasale

Date of Hearing	30.05.2024
Date of Pronouncement	24.06.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-33/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 5.12.2022 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2017-18.

2. The assessee raised following grounds of appeal:

a. In the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC), CIT (Appeals),



Mumbai has erred in passing an ex-parte order thereby grossly violating the principles of Natural Justice.

- b. In the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC), CIT (Appeals) has erred in sustaining addition made by the Ld. Assessing Officer Rs. 23,34,200/- as unexplained money u/s 69A of the Act.*
- c. In the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC), CIT (Appeals) erred in upholding levy of tax at 60% on cash deposited in bank Rs. 23,34,200/- prior to 16th December 2016 i.e. prior to the date on which the Taxation Laws (Second Amendment) Act, 2016 received the assent of the President, instead of the then applicable rate of 30%.*

3. Brief facts of the case the assessee is a proprietor having business of trading of eggs. He filed his return of income for AY 2017-18 on 06.10.2017 declaring total income of Rs. 6,64,510/-. The case was selected for scrutiny, as the assessee had deposited Rs. 29,88,210/- in his bank account during the demonetization period. Since no response was received from the assessee to the notices issued by the AO, the assessment was made u/s 144 vide order dated 19.12.2019 at a total income of Rs. 36,63,220/-, after adding Rs. 29,98,710/- u/s 69A of the Act as unexplained income.



4. Aggrieved with the assessment order, an appeal was filed before CIT(A)/NFAC on 16.03.2020. The Ld. CIT(A) issued 3 notices to the assessee on different dates, however, no compliance was made by the assessee. The CIT(A), therefore, upheld the addition of Rs. 29,98,710/- but gave benefit of returned income of Rs. 6,64,510/-. Thus, the addition to the extent of 23,34,200/- was sustained.

5. The appeal before ITAT has been filed on 05.12.2023 i.e. after delay of 290 days. It has been submitted through an affidavit that the order u/s 250 passed by the CIT(A) was not in the knowledge of the assessee as all the notices/orders were sent on email id of an ex-employee of his earlier tax consultant. Since, the said employee had left the job with the consultant, no one informed the assessee about these notices/orders. It was only in the month of November, 2023 when the new consultant appointed by the assessee checked the status on e-filing portal, that the appellate order came to his knowledge. In view of these circumstances, request for condonation of delay of 290 days has been made.

6. We have considered the rival submissions. In view of the facts submitted by the assessee, the delay in filing of appeal is condoned. At the same time, it is noticed that at no stage during the assessment or appellate proceedings, any compliance has been made by the assessee. As such we deem it proper to impose cost of Rs. 11,000/- on the assessee. Subject to the deposit of cost, the case is remanded back to the file of AO for making a fresh



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assessment after giving due opportunity to the assessee. The assessee is also directed to make necessary compliance before AO.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 24.06.2024.

Sd/-

Sd/-

NARENDER KUMAR CHOUDHRY
(JUDICIAL MEMBER)

RENU JAUHRI
(ACCOUNTANT MEMBER)

Place: Mumbai

Date 24.06.2024

ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.