

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD**

**BEFORE
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No. 213/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Mohammed Hasham Uddin, Hyderabad [PAN : AOGPM2743A]	Vs.	Income Tax Officer, Ward-7(2), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Smt. S. Sandhya, AR
राजस्व द्वारा/Revenue by: Shri M. Naveen Kumar, DR

सुनवाई की तारीख/Date of hearing: 10/06/2024
घोषणा की तारीख/Pronouncement on: 28/06/2024

आदेश / ORDER

Aggrieved by the order dated 24/11/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Mohammed Hasham Uddin ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. At the outset, learned AR submitted that assessee preferred this appeal with a delay of 42 days. In this connection, he filed an affidavit, explaining the reasons for the delay, and prayed that delay in filing the appeal is due to fever and dengue, and the assessee was advised to take bed rest by the doctor. Since the assessee was not able to walk to go to

his advocate's office, he could not file the same in time before the Tribunal. Hence, he submitted that the delay was beyond his control. Though the learned DR denied to condone the delay, there is no reason as to why this explanation of the assessee cannot be accepted. Recording the same, I condone the delay and proceed to hear the matter on merits.

3. Assessee is an individual and claims to have been engaged in the business of dairy products apart from purchasing and selling the cattle. Learned Assessing Officer found that during demonetisation period, there were certain deposits in the account of the assessee with the bank, and observing that the assessee did not furnish any explanation for the same, added a sum of Rs. 40,20,289/- to the income of the assessee. In appeal, learned CIT(A) obtained a remand report from the learned Assessing Officer according to which out of the total deposits of Rs. 25,65,242/- during the financial year 2016-17, only a sum of Rs. 18,83,500/- was deposited during demonetisation. Learned CIT(A), however, observed that no evidence is furnished to support the plea of the assessee that he derived any income in that year, therefore, he granted relief only to the extent of Rs. 3 lakhs and added the balance amount of Rs. 22,64,242/- to the income of the assessee.

4. Learned AR submitted that to ask evidence for every thing will put the assessee to hardship and the very fact that the assessee is making a living for his family itself indicates that he is doing some business or the other. She further submitted that in the absence of evidence to the contrary, there is no reason for the authorities not to believe the version of the assessee that his source of income for living is the business in milk and dairy products, where most of the transactions are mainly in cash

because of the need to purchase the cattle fodder, medicines, fee for veterinary doctors, transportation charges and daily wage to the workers because of the location of the farm in the outskirts of the city. Since the business of the assessee cannot be disputed the turnover and cash deposits also cannot be suspected.

5. Per contra, learned DR, submitted that except the oral testimony of the assessee, no evidence whatsoever is forthcoming to support the entries in the bank statement. He further submitted that there are certain transactions of dealing in sale of buffalos apart from sale of milk, and all the transactions are shown in cash. He submitted that for want of evidence, the authorities are justified in making the addition.

6. I have gone through the record in the light of the submissions made on either side. In the remand report, the learned Assessing Officer clearly stated that out of the total deposits of Rs. 25,65,242/-, only a sum of Rs. 18,83,500/- was deposited during the demonetisation period. The assessee pleaded that he has been dealing in milk and other dairy products and in that process, he also indulges in purchase and sale of buffalos. There is no evidence to the contrary either before the authorities or before me, and to make a living for himself and his family members, the assessee must be pursuing some avocation and in the absence of any evidence to the contrary, the avocation pleaded by the assessee need not be suspected, nor the assessee be put to proof of it.

7. Out of the total deposits of Rs. 25,65,242/-, during the financial year 2016-17, a bulk of it to the tune of Rs. 18,83,500/- was deposited during demonetisation period and according to the assessee, it is only due

to demonetisation he had to deposit all the available cash as on the date of demonetisation in the bank. According to him, most of the receipts in money will go to expenditure in money in his business, because the receipts for sale of milk and the expenditure towards fodder will be in cash only. He, therefore, justifies that in his business, holding cash is a usual thing and because of the demonetisation compulsion, he had to deposit the same into the bank.

8. On a careful consideration of these facts, I am of the considered opinion that the learned CIT(A) is not justified in considering the entire deposits of the year to the tune of Rs. 25,62,242/-, because the deposits during demonetisation period are only to the tune of Rs. 18,83,500/-. Apart from this, assessee pleaded that the total deposits made during the financial year 2016-17 including the demonetisation period were only Rs. 11,03,690/- and the balance of Rs. 36,16,600/- was added without any reason. The assessee also filed the bank account, which according to the assessee was not considered by the authorities.

9. Assessee also filed the confirmation letters, cash book, ledger copies in the books of accounts and submits that due to the new procedure of on line notices, and that too the notices issued to the e-mail ID of the auditor, who did not inform him, he could not pursue the proceedings diligently by submitting these documents before the authorities. Considering the circumstances as a whole, I admit the additional evidence and restore the issue to the file of the learned Assessing Officer to verify whether really the deposits during demonetisation period were only Rs. 11,03,690/- and if so, consider such amount of deposit during demonetisation period and also evaluate the books and confirmation

letters now filed and to take a view according to law. Grounds are treated as allowed for statistical purposes.

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

Order pronounced in the open court on this the 28th day of June, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 28/06/2024

TNMM

Copy forwarded to:

1. Mohammed Hasham Uddin, 13-3-46, Puranapul, Hyderabad.
2. The Income Tax Officer, Ward-7(2), Hyderabad.
3. The Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD