

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI. RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 758/MUM/2024
(Assessment Year: 2017-18)**

Jayesh Jagat Parekh 8 th Floor, Pushpvinod S. K. D. Road, Next to Puranmal Hotel, Vile Parle (W), Mumbai – 400 056.	Vs.	Income Tax Officer – 34 (2)(1), Mumbai Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.
PAN/GIR No. AGQPP9138E		
(Appellant)	..	(Respondent)

Assessee by	Shri. Himanshu Gandhi
Revenue by	Smt. Kakoli Uttam Ghosh
Date of Hearing	24/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 09/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2017-18.

2. Assessee is aggrieved by addition of Rs. 32,00,000/- of aggregate cash deposit during demonetization period which has

been taxed u/s.69A r.w.s. 115BBE. The relevant grounds raised by the assessee reads as under:-

1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 27,00,000 under section 69A r.w.s. 115BBE of Income Tax Act, 1961 being cash deposited during demonetization period out of the recovery of trade dues after polish compliance and legal cases.

2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 5,00,000 under section 69A of Income Tax Act, 1961 without considering the facts that cash was deposit out of past savings and household savings of appellant.

3. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that the provision of section 69A of Income Tax Act, 1961 not applicable when the return is filed under presumptive taxation scheme under section 44AD of Income Tax Act, 1961 in which the appellant is not required to maintain any books of account.

4. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to considered that provision of section 115BBE of Income Tax Act, 1961 is not applicable when the source of deposit is trade receipt and past savings.

3. The brief facts are that assessee is an individual deriving income from manufacturing and selling of ladies lower garments. Since assessee's total sales were below the threshold limit of getting the accounts audited u/s.44AB, it has been filing its return of income under presumptive rate of taxation u/s.44AB. It has filed its return of income for A.Y.2017-18 on 02/08/2017 declaring total income of Rs.2,69,780/- which included profit u/s.44AD @8% of Rs.22,53,441/-. The assessee's case was selected for scrutiny under CASS to verify the cash deposits

during the demonetization period. As per the information available on ITBA portal, assessee has deposited cash of Rs.32,00,000/- in Kotak Mahendra Bank during the year in three different accounts which were as under:-

<i>Sr. No.</i>	<i>Name of Bank</i>	<i>A/c. No.</i>	<i>Total Amount (Rs.)</i>
1.	<i>Kotak Mahindra Bank</i>	<i>4411405041</i>	<i>27,00,000/-</i>
2.	<i>Kotak Mahindra Bank</i>	<i>2311714324</i>	<i>2,50,000/-</i>
3.	<i>Kotak Mahindra Bank</i>	<i>2311714324</i>	<i>2,50,000/-</i>
<i>Total</i>			<i>Rs. 32,00,000/-</i>

4. In response to the show-cause notice to submit the nature of source of cash deposits, assessee submitted that since he has been filing his return of income u/s.44AD and offered 8% net profit of total receipts as income for the year under consideration, therefore, he was not maintaining any books of accounts. Regarding source of cash deposits, assessee submitted that he has received dues from the party name M/s. Sarita Exports in cash amounting to Rs.27,00,000/- during the demonetization period. Earlier this party had given cheques to the assessee in the earlier years which was dishonored following which assessee had filed police complaint against the said party M/s. Sarita Exports. However, during the demonetization period, the said

party returned the amount in cash out of which was deposited in the bank account and Rs. 5,00,000/- was from his personal savings which were deposited in the minor account of his child of Rs.2,55,000/- and Rs.2,50,000/- was from his saving account and Rs.27,00,000/- was deposited in the current account which was for the business of the assessee. Since, assessee could not submit the details of sale and purchase made with the party and address and PAN of M/s. Sarita Exports nor he could produce any bills and delivery challans, therefore, ld. AO rejected the claim of the assessee. Neither assessee could establish the creditworthiness and genuineness of the transaction done with M/s. Sarita Exports by the assessee dated 25/02/2013 mentions that there is no liability towards the assessee. On enquiry the party stated that they had already returned all the supplied material back to the assessee before the date of dishonor of cheques. Accordingly, ld. AO after enquiry from the said party treated the entire amount deposited in the bank account of Rs.32,00,000/- as unexplained and added u/s.69A r.w.s. 115BBE. The ld. CIT (A) too has confirmed the said addition on the reasoning given by the ld. AO.

4. We have heard both the appeals and also perused the relevant material placed on record. It is an undisputed fact that assessee is in the business of retail sale of ladies garments and only source of income is through this business. Further, the sales have been recorded in cash which was regularly deposited in the bank account. Since assessee's turnover was ranging between 25-35 lakhs in a year, he has been showing the profit

under presumptive rate of 8% u/s.44AD not only in the past but also in the subsequent years. Even if assessee's explanation that assessee has received cash of Rs.27,00,000/- from M/s. Sarita Exports has been found to be not acceptable in view of various findings given by the ld. AO and assessee could not rebut such finding, then source of these cash is out of business only. Looking to the fact that assessee was showing income from business of retail sale of ladies garments, then the cash deposits could be from unaccounted sales from the business which assessee had not disclosed in the return of income. Accordingly, source of cash deposit of Rs.32,00,000/- is treated to be out unaccounted sales made by the assessee. Admittedly, assessee has been making sales in cash from his small retail outlet for ladies lower garments that the price of such garment is less than Rs.2,000/- per piece. Thus, it would be better to apply net profit rate of 8% on these unaccounted sales of Rs.32,00,000/- which works out to Rs.2,56,000/-. Thus, the addition is restricted to Rs.2,56,000/- as against addition of Rs.32,00,000/- made by the ld. AO. The reason for adopting the net profit rate of cash deposit is that assessee does not have any source of income nor has made any investment and is only involved in petty retail business. Thus, it cannot be held that assessee had some other unexplained cash from some other sources. Accordingly, the addition is sustained on the basis of application of net profit of 8% on cash deposits as the same is treated as income from business and profession and not to be taxed u/s.69A r.w.s.

115BBE. Accordingly, the appeal of the assessee is partly allowed.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced on 28th June, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 28/06/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai