

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**

**SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 4094/Mum/2023**

**Assessment Year: 2017-18**

<b>M/s. Pranay Traders and Supplier Pvt. Ltd.</b> 63, Deccan Court, S.V. Road Bandra West Mumbai - 400050 <b>[PAN: AAGCP5928D]</b>	Vs	<b>Asst. Commissioner of Income Tax - Circle 13(1)(2), Mumbai</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Ms. Vasanti Patel a/w Shri Nilesh Joshi, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 09/07/2024  
घोषणा की तारीख /**Date of Pronouncement**: 22/07/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dt. 17/10/2023 by NFAC, Delhi, pertaining to Assessment Year 2017-18.

2. The first substantive grievance of the assessee is that the ld. CIT(A) erred in confirming addition of Rs. 49,49,000/- being the cash deposited during the demonetization period.

3. Briefly stated, the facts of the case are that the assessee filed its return of income electronically declaring loss of Rs. 21,64,923/- on 31/03/2018. The return was selected for scrutiny assessment through CASS and accordingly statutory notices were issued and served upon the assessee.

4. The assessee is a private limited company engaged in filling of earth work and supply of gravel. During the year under consideration,

the assessee has deposited cash in his bank accounts during the demonetization period. The assessee was asked to submit the details. The assessee explained the cash deposits during three financial years as under:-

Bank A/c	Cash deposits for F.Y. 2015-16 (Rs.)	Cash deposits for F.Y. 2016-17 (Rs.)	Cash deposits for F.Y. 2017-18 (Rs.)
414501010036515	12,35,000/-	93,16,000/-	5,03,500/-
414505010050024	26,93,000/-	21,93,000/-	1,50,000/-

5. A month-wise cash deposit and cash withdrawals during the year under consideration are as under:-

*The details of month wise cash deposits for F.Y. 2016-17 are as under:-*

Sr No	Bank A/c No	Period	April	May	June	July	August	September	October	November	December	January	February	March	Total
1	414501010036515	2016-2017	45,000	3,00,000	-	-	15,72,000	1,50,000	16,20,000	41,39,000	10,60,000	-	1,19,000	3,11,000	93,16,000
2	414505010050024		5,50,000	4,43,000	-	-	8,00,000	-	-	4,00,000	-	-	-	-	21,93,000
	<b>total deposits in both the banks</b>		5,95,000	7,43,000			23,72,000	1,50,000	16,20,000						1,15,09,000

*The details of month wise cash withdrawals for F.Y. 2016-17 are as under:-*

Sr No	Bank A/c No	Period	April	May	June	July	August	September	October	November	December	January	February	March	Total
1	414501010036515	2016-2017	6,22,000	-	5,00,000	1,00,000	10,000	60,000	7,70,000	48,000	20,000	55,000	5,85,000	5,000	27,75,000
2	414505010050024		4,88,000	50,000	50,000	20,000	-	-	-	-	50,000	-	-	-	6,58,000
	<b>total withdrawal in both the banks</b>		11,10,000	50,000	5,50,000	1,20,000	10,000	60,000	7,70,000	48,000					34,33,000

6. The total cash deposits made during 09/11/2016 to 31/12/2016 was Rs.49,49,000/-. The AO was of the strong belief that the assessee has not established the source from which it has deposited the aforementioned cash in its bank account. The assessee was asked to

show-cause why the cash deposit be not treated as unexplained. The assessee filed a detailed reply which did not find any favour with the AO who went on to make addition of Rs.49,49,000/- u/s 68 r.w.s. 115BBE of the Act. The AO further rejected the claim of carry forward of loss as the return of income was filed after the due date.

6.1. The assessee carried the matter before the Id. CIT(A) but without any success.

7. Before us, the Id. Counsel for the assessee vehemently stated that, the books of the assessee were audited and complete details of source of cash deposit were filed during the proceedings before the lower authorities. Strong reliance was placed on the decision of the Co-ordinate Bench in the case of *Pukhraj Nathmal Jain vs. ITO* in ITA No. 2815/Mum/2023; AY 2017-18, order dt. 26/02/2024.

Per contra, the Id. D/R strongly supported the findings of the AO and read the operative part of the same.

8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the books of accounts of the assessee are duly audited by a Chartered Accountant. The audited statement of accounts are placed in the paper book. A perusal of the profit and loss account for the year under consideration show that the assessee has revenue from operations amounting to Rs.17,02,48,851/- which includes sales of Rs.15,86,00,000/-. It is also not in dispute that the assessee earned income from transportation and trading primarily and to carry on its business, the assessee has purchased trucks. It appears that the AO has not considered the sales and nature of business of the assessee. Though, the AO has doubted the source of cash deposit, yet did not point out any error or infirmity in the books of accounts of the assessee. No defect was pointed out nor found by

any of the lower authorities and since the entire deposits have gone through the books of accounts regularly maintained by the assessee duly audited, therefore, we are of the considered view that the entire addition has been made on the basis of surmises and conjectures which have no legs to stand. Moreover, though the AO has alleged unexplained cash deposit during demonetization period but has not brought on record anything to show that the said cash deposits were made in specified bank notes (SBN).

8.1. Though at para 4.7., the AO has referred to huge variation in the cash deposited during the demonetization period and has also referred to the huge surge of revenue from operations but has not pointed out any error or defect in the books of accounts. However, we find that at clause (iv) at page 5, the AO has mentioned that the assessee has produced the accounts at the fag end of the assessment proceedings. Therefore, we are of the considered view that, the AO should examine the books of accounts thoroughly and decide the issue afresh after affording reasonable and adequate opportunity of being heard to the assessee. The AO is also directed to examine the authenticity of the bills furnished by the assessee. Accordingly, this ground is allowed for statistical purposes.

9. Insofar as the carry forward of the claim of business loss is concerned, we are of the concerned view that all that the AO is required is to inform the assessee about the amount of loss as computed by him. Whether the loss in any year may be carry forward to the following year and set off against the profits, has to be determined by the AO who deals with the assessment of the subsequent year. It is for the AO dealing with the assessment in the subsequent year to determine whether the loss of the previous year

may be set off against the profits of that year. For this proposition, we place strong reliance on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Manmohan Das* reported in 59 ITR 699, wherein it was held as under:-

*"Whether the loss in any year may be carried forward to the following year and set off against the profits and gains of the subsequent year under section 24(2) has to be determined by the Income-tax Officer who deals with the assessment of the subsequent year, A decision recorded by the Income-tax Officer who computes the loss in the previous year that the loss cannot be set off against the income of the subsequent year is not binding on the assessee."*

10. In the light of the aforementioned discussion and respectfully following the ratio laid down by the Hon'ble Supreme Court (*supra*), we direct the AO to expunge the concluding remark "*..the same losses of Rs.67,09,602/- is disallowed and is taken as nil and are hereby not allowed to be carried forward to subsequent years.*"

11. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 22<sup>nd</sup> July, 2024 at Mumbai.**

*Sd/-*  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

*Sd/-*  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 22/07/2024

*SC S/P*

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai