

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.12/KOL/2024
Assessment Year: 2017-18**

Prem Prasad Tulshihatta, PS. Harischan- drapur, Malda, West Bengal – 732140. (PAN: APNPP7328E)	Vs.	Income Tax Officer, Ward-3(2), Malda
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, AR

Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 01.05.2024

Date of Pronouncement : 23.07.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 vide Appeal No. ITBA/NFAC/S/250/2023-24/1057240315(1) dated 20.10.2023.

2. Along with the Appeal Memo, the assessee has also filed an application for condonation of delay as there is a delay of about 13 days in filing the appeal, wherein it has been stated as under:

"1. That the appeal filed by the Assessee before the commissioner (Appeals), NFAC was disposed of by order dated 20.10.2023 passed by Commissioner (Appeals), NFAC.

2. That the time for filing of the appeal before the Tribunal was to expire on 20.12.2023.

3. That there is a delay in filing this appeal because the counsel to whom the appellate order was given for filing is unwell and because of his illness the appeal was not filed within the due date.

4. In light of above circumstances, it is requested before your lordship to condone the delay in the present case as the circumstances were beyond the control of the assessee.

5. That the memo of appeal has been filed on 02.01.2024 in the office of the Tribunal.”

2.1. The assessee has also filed an affidavit in respect of the reasons for the delay, which is reproduced as under:

“I, Prem Prasad S/o, Mourangi Prasad residing at Tulsihatta, Malda, Pin-732140, West Bengal, having PAN: APNPP7328E, do hereby solemnly affirm and state an oath as under:

1. I engaged the services of Sri Sanjay Pareek, as part-time accountant, for the purpose of handling my accounts and my income tax matters for my business concern M/s Prem Prasad and my personal files.

2. Sri Sanjay Pareek was entrusted with the responsibility of ensuring the accurate preparation and timely submission of my income tax returns and other income tax compliances.

3. I relied on Sri Sanjay Pareek to comply all requirements and obligations related to assessment proceeding u/s 143 (3) and appellate proceeding u/s 250 of the Income Tax Act, 1961 related to AY 2017-18.

4. That as I trusted Sri Sanjay Pareek, he was in full control of income tax login id and password and all compliance related matters.

5. That it came to my knowledge that there was negligence on the part of Sri Sanjay Pareek, which led to non-compliance during assessment proceedings u/s 143(3) and also during appellate proceedings u/s 250 of the Income Tax Act, 1961.

6. As a result of the aforementioned negligence, there was complete non-compliance for the aforesaid assessment proceeding and appeal proceeding. I plea that I should not be a sufferer for the fault of my accountant and I have also taken action against the said employee by removing him from the job.

7. That the above non-compliance during assessment proceeding u/s 143(3) and appellate proceeding u/s 250 was due to reasons beyond my control.

8. That the appeal filed by the Assessee before the Commissioner (Appeals), NFAC was disposed of by order dated 20.10.2023 passed by Commissioner (Appeals),

9. *That the time for filing of the appeal before the Tribunal was to expire on 20.12.2023.*

10. *That there is a delay in filing this appeal because the counsel (Mr. Pankaj Baid, Advocate) to whom the appellate order was given for filing is unwell and because of his illness the appeal was not filed within the due date.*

11. *In light of above circumstances, the delay in the present case as the circumstances were beyond the control of the assessee.*

12. *That the memo of appeal has been filed on 02.01.2024 in the Office of the Tribunal*

13. *I affirm that the statements made in this affidavit are true and correct to the best of my knowledge and belief.”*

2.2. Considering the reasons for the delay being the illness of the counsel and the negligence of the accountant, the delay of 13 days is hereby condoned and the appeal is admitted for adjudication.

3. The Grounds of appeal raised by the assessee are reproduced as under:

“1. That the order passed u/s. 250 is bad in law as well as on facts of the case.

2. That the CIT(A) erred in law as well as on facts of the case in not providing reasonable opportunity of hearing to the appellant.

3. That the CIT(A) erred in law as well as in facts by confirming the addition of Rs.61,50,000/- made by the Ld. Assessing Officer by treating the cash deposit in the bank accounts of the appellant during demonetization period as unexplained money u/s. 69A of I. T. Act, 1961.

4. That the CIT(A) erred in law as well as in facts by confirming the action of the Ld. Assessing Officer of estimating income at 1.63 percent on difference of Bank deposit and Turnover shown by the appellant to the tune of Rs.2,13,086/- without proper justification.

5. That the appellant craves leave to add/or amend any ground of this appeal.”

4. Brief facts of the case are that the assessee filed e-return of Income for the AY 2017-18 declaring total income of Rs. 3,55,380/- on 16.03.2018 from Trading business in the name of M/s Sidhi Vinayak International. The case was selected under CASS for complete scrutiny with the issue of cash deposit during the demonetisation period of Rs.61,50,000/-. Notice u/s 142(1) dated 13.11.2019 was issued to explain the deposits. The

assessee failed to appear and to produce Books of Account and failed to prove the nature and the source of the cash deposited. Hence the whole amount of Rs. 61,50,000/- deposited during the demonetisation period was added to the income of the assessee u/s 69A of the Act. As per the facts mentioned in the Statement of Facts filed along with the Form No. 35 before the Ld. CIT(A), it is stated that the AO has over looked some facts. The assessee, vide his letter uploaded on 03.12.2019, replied to the queries of the AO regarding cash deposits and some other queries and also earlier the assessee had replied to the Departmental queries regarding deposit of cash during the demonetisation period and it is stated that the same is available in the portal. The assessee deposited his cash in hand in banks during the demonetisation period as after that period, the old notes of Rs.1000 and Rs. 500 (Specified Bank Notes or SBNs) had no value at all. The assessee deposited in parts in the Bank to minimise risk of carrying the money for deposit and there was no other reason behind the same. The Ld. AO has also observed that the assessee had shown total turnover of Rs. 4,20,75,374/- whereas total credits in bank accounts were Rs.5,51,48,116/-, therefore, as per the Ld. AO, the assessee had undisclosed business receipts of Rs 1,30,72,742/- and accordingly, gross profit of Rs 2,13,086/- being @ 1.63 per cent of the turnover was also added to the income of the assessee. The assessee preferred an appeal before the Ld. CIT(A), who disposed of the appeal *ex parte* as there was no response received from the assessee and sustained the additions as made by the AO. Aggrieved, the assessee is in appeal before this Tribunal.

5. During the course of the hearing, it was contended that the assessee is based in Malda and all the e-mails/passwords were in the name of the accountant and, therefore, due compliance could not be made before the Ld. CIT(A). It was stated that while the AO added a sum of Rs.61,50,000/- u/s. 69A of the Act but he further added gross profit @ 1.63% on the difference between the bank deposits and the gross sales shown, thereby

treating the difference of Rs.1,30,72,742/- as undisclosed business receipts and applied a gross profit rate of 1.63% and made an addition of Rs.2,13,086/-. The assessee relied on the decision of the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax-IV Vs. Vishal Exports Overseas Ltd. in Tax Appeal No. 2471, 2473, 2475, 2476 of 2009 dated 03.07.2012 reported in 2012 (7) TMI 1110 wherein it has been held that where the assessee had already offered sales and such income was accepted by the AO to be the income of the assessee, the addition of the same amount once again u/s 68 will tantamount to double taxation. Reliance was also placed on the decision in ITA 613/2010 dated 09.04.2010 in the case of CIT Vs. Kailash Jewellery House [2010] (4) TMI 1070 (Del.) wherein the Hon'ble Court has held as under:

"The revenue is in appeal against the order passed by the Income-tax Appellate Tribunal dated 08.07.2009 passed in the revenue's appeal being ITA No.3597/Del/2008 pertaining to the assessment year 2006-07. Before the Tribunal, the revenue had taken the ground that the Commissioner of Income-tax (Appeals) had erred in deleting the addition of an amount of Rs. 24,58,400/- in respect of cash received in the bank account on the ground that the assessee had not established the nexus of such deposit to any source of income.

2. On examination of the orders passed by the Assessing Officer, the Commissioner of Income-tax (Appeals) and the impugned order passed by the Tribunal, we find that both the appellate authorities below have disagreed with the Assessing Officer and have deleted the said addition on the ground that the cash sales were duly recorded in the books and that they had found place in the profit and loss account.

3. The Commissioner of Income-tax (Appeals) had returned a finding that the stock and cash found at the time of search had been examined by the Assessing Officer and was compared with the stock and cash position as per books. The stock and cash position as per the books had been arrived at after the effect of the aforesaid cash sales. The stock position as well as the cash position as per the said books had been accepted by the Assessing Officer. The Commissioner of Income-tax (Appeals) also noted that the appellant had furnished the complete set of books of accounts and the cash books and no discrepancy had been pointed out. The Assessing Officer had doubted the aforesaid sales as bogus and had made the aforesaid addition. However, the Commissioner of Income- tax (Appeals) as well as the Income-tax Appellate Tribunal returned findings of fact to the contrary.

4. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs. 24,58,400/- was credited in the sale account and had been duly included in the

profit disclosed by the assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same.

5. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration. The appeal is dismissed.”

6. We have heard the rival contentions and have also perused the orders of the lower authorities and record. It is stated in the statement of facts that the AO has overlooked some facts submitted by the assessee vide his letter filed on 03.12.2019 and the response to the queries of the AO regarding cash deposits and other queries and the entire reply to the departmental query regarding deposit of cash during the demonetization period is available on the portal as well. It is mentioned that out of Rs.5,51,48,116/-, Rs.61,50,000/- represents credit in bank account during the demonetization period and balance Rs.69,22,742/- (being the difference of Rs.1,30,72,742/- and Rs.61,50,000/-) may also be the cash deposit before and after the demonetisation period subject to reconciliation or payment due from Debtors etc. and the assessee has submitted that no addition can be made on this ground without proper verification of the facts.

7. The Ld. AO, on the one hand, has treated the sum of Rs.61,50,000/- as unexplained money which has been deposited from 09.11.2016 onwards since the assessee could not have accepted the demonetisation currency i.e. SBNs of Rs.1000 & Rs.500 denomination from 9.11.2016 onwards, as the same were not legal tenders with certain exceptions as notified in the Gazette Notification of Ministry of Finance in No.2653 dated 8th November, 2016, but in the instant case, the assessee's bank deposit pattern indicated that he had received SBNs during the demonetisation period in spite of the above Gazette Notification. The assessee's case does not come under the exempted/exception category as notified by the RBI as the assessee was

not authorised by the RBI or the Govt. of India to accept SBNs and therefore, the assessee was not allowed to receive the old SBNs for doing the monetary transactions. In view of the discussions as above made by the Ld. AO, the monetary transactions done by the assessee in the SBNs after 09.11.2016 were not valid and, therefore, the same has been treated as unexplained money u/s 69A of the Act by the Ld. AO as there was no proper representation and the addition u/s 69A along with the addition of gross profit estimated on the difference in sales has been sustained by the Ld. CIT(A).

8. However, there is merit in the argument of the assessee that on one hand, the AO is treating the part of the deposits in the bank as unexplained u/s 69A of the Act but at the same time, the difference in the deposits in the bank accounts and the sales shown has been treated as undisclosed business receipts on which gross profit rate of 1.36% has been applied, which tantamount to double addition to the extent of addition made under section 69A of the Act. During the course of the hearing, the Ld. AR did not want to press this ground no. 4 of the appeal relating to the profit estimated and argued that the addition under 69A may be deleted. However, the decisions relied upon by the assessee (supra) are distinguishable on facts as in those cases, the books of account were maintained and even the stock tally was carried out, hence the decisions are not applicable to the facts of the case of the assessee as the required details were not produced before the Assessing Officer. In fact, once a sum of Rs. 61,50,000/- was treated as unexplained u/s 69A, the turnover should have been reduced by this amount and, thereafter, the gross profit rate should have been applied on the balance amount as has been held in the case of **Shree Sanand Textiles Industries Ltd. Vs. The Dy. CIT (OSD) Circle-8 Ahmedabad**, ITA No.995/Ahd/2014 with CO No.167/Ahd/2014 (in ITA No.1166/Ahd/2014) & The DCIT Circle-8 Ahmedabad Vs. Shree Sanand Textile Industries Ltd., Ahmedabad in ITA

No.1166/Ahd/2014 by the ITAT 'B' Bench, Ahmedabad as under in para 9.3:

*9.3. Admittedly, the amount of sale as claimed by the assessee was offered to tax by reflecting the same in the trading and profit and loss account. This fact has not been doubted by the authorities below. However, the existence of the parties was not proved by the assessee based on the documentary evidence during the proceedings. Accordingly, the learned CIT (A) treated the amount received from such parties as unexplained cash credit under section 68 of the Act. In this connection we note that the impugned amount has been taxed twice firstly the same was treated as sales and secondly the same was treated as unexplained cash credit under section 68 of the Act. Even if we assume that the action of the learned CIT (A) is correct i.e. the impugned amount is representing the cash credit as provided under section 68 of the Act. **Then, the learned CIT (A) was duty-bound to reduce the same from the amount of sales as the same does not represent the sale but unexplained cash credit.** As such, the same amount cannot be held taxable twice as per the wish of the learned CIT (A). In our considered view the action of the learned CIT (A) is erroneous to the extent of treating the same as sale proceeds and the unexplained cash credit simultaneously. **{emphasis supplied}***

Further, there is no discussion in the assessment order nor even in the order of the Ld. CIT(A) regarding the reply filed by the assessee on the portal of the department, which the assessee claims to have filed. The assessee contends that the deposit of Rs.69,22,742/- may also be the cash deposited before and after the demonetisation period subject to reconciliation or payment from debtors etc. In the cases relied upon by the Ld. AR filed during the course of appeal, the required verification of the books of account was made while in the instant appeal, no such verification was carried out and the assessment order was made u/s. 144 of the Act. The Ld. AO in para 3.2.3 of the assessment order has noted that since the SBNs were just pieces of papers and they bore no value on 9th November, 2016 or after as the Central Government, the guarantor, had withdrawn its guarantee, therefore, it cannot be measured in money terms and if the assessee had received any SBNs after 09.11.2016 on account of any monetary transactions and utilized the same for making cash deposits into the bank account, then, the credit of the same is not valid and the same has to be treated as unexplained money u/s. 69A of

the Act and brought to tax. Further, as is mentioned in para 3.2 of the assessment order, the assessee neither filed the return of income for AY 2017-18 (this observation is apparently incorrect as the return was e-filed showing total income of Rs.3,55,380/- on 16.03.2018, as is mentioned in the first para of the assessment order) nor furnished the books of account or the tax audit report for AY 2017-18 so that the nature and source of the credits in the bank accounts could be examined, hence the decisions relied upon by the Ld. AR (supra) are not applicable to the facts of the case of the assessee since neither the books of account were produced nor any reconciliation of the cash deposits was carried out. The assessment order was upheld by the Ld. CIT(A) as there was no representation.

9. As regards the issue relating to double additions, similar issue came up for consideration in the case of **Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC)** wherein the Hon'ble Supreme Court have held as under:

It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the ITO is entitled to treat it as taxable income:

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As the question whether having regard to the fact that the ITO assessed the income on a percentage basis, he was justified in treating the said sums as profits from an undisclosed source, the High Court rightly answered the question in the affirmative.

The question would suggest that because the income from a disclosed source had been computed on the basis of an estimate and not on the basis of the return filed in respect of it, an income represented by a credit entry in the books of account of that source could not be held to be income from another and undisclosed source. Why it could not be so held was not clear. The reason given in support of the suggestion was that if that income was held to be income of an undisclosed

source, the result would be double taxation of the same income which the Act did not contemplate. Apparently, it was said that there would be double taxation because it was assumed that the same income had once been earlier taxed on the basis of an estimate. This reason was obviously fallacious, for if the income was treated as one from an undisclosed source which the question postulates, it was not treated as income of the disclosed source which had previously been assessed to tax and, therefore, there was in such a case no double taxation. It was not a case where the income sought to be taxed was held to be undisclosed income of a disclosed source, the income of which source had previously been taxed on the basis of an estimate. If it were so, the question of double taxation might have been legitimately raised. That, however, is clearly not the case here as the question as framed itself showed.

The question as to the source from which a particular income is derived is one which has to be decided on all the facts of the case. Hence the question whether income represented by an entry in the books of a business is income of that business or of another business would have to be decided on the facts which showed the business to which it belonged. But quite clearly the answer to that question would not depend on whether the income from the first mentioned business had been computed on the basis of a return filed or of an estimate of the income made by the taxing authorities. This, however, was what the question as framed suggested, and that suggestion was wholly without foundation. Therefore, it could not be said that the taxing authorities were precluded from treating the amounts of the credit entries as income from undisclosed sources simply because the entries appeared in the books of a business whose income they had previously computed on a percentage basis.

So, depending upon the facts of the case, both the additions are permissible if the nature and source of receipts is not satisfactorily explained and there is mismatch in sales.

10. Since the required details were not filed, the AO had no other alternative but to estimate the income. However, the reply filed on the portal, as claimed by the assessee should have been considered, which has not been done either by the Ld. AO or by the Ld. CIT(A). It has been held in the case of **Kachwala Gems v. Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC)** that *it is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt, the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess*

work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. There was no arbitrariness in the instant case on the part of the authorities. Thus, there was no force in the instant appeal and the same was to be dismissed accordingly. [Para 11]

10.1. Also, in the case of **State of Kerala v. C. Velukutty [1966] 60 ITR 239 (SC)** it has been held that *Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though subsection (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.*

10.2. Further, in the case of **Brij Bhushan Lal Parduman Kumar v. Commissioner of Income-tax [1978] 115 ITR 524 (SC)**, Hon'ble Supreme Court have held that *the authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.*

10.3. Similarly, in **Tara Singh v. Income-tax Officer, Ward III Khanna [2017] 81 taxmann.com 293 (Punjab & Haryana)** it has been held that *Law in respect of best judgment assessment is well settled. The assessing*

authority while making the best judgment assessment should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not of anyone else.

Hence, in the best judgment order, the income has to be estimated even though some element of guess work is involved.

11. Similar issue relating to cash deposited during the demonetisation period also came up before the **ITAT SMC-'A' Bench, Bangalore in the case of Shri Aijaz Ahmed Suri Vs. The Income Tax Officer, Ward – 1, Bagalkot**, in which the following procedure has been prescribed for assessing the unexplained deposit:

6. We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019- ITA.II. These instructions give a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

7. In one of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

8. Instruction 21/02/2017 issued by the CBDT suggests some indicators towards verifying the suspicion of backdating of cash. It also suggests indicators to identify abnormal jump in cash trials on identifiable persons as compared to earlier history in the previous year. Therefore, in our opinion it is important to examine whether

assessee falls into any of these categories and transfer of deposit of cash is not in line with history of transactions in the preceding assessment years.

9. The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions based on the facts in present case. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However, the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash. Assessee is directed to furnish PAN and address details of the depositors from whom loan repayment has been accepted in cash. The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

11.1 Further, in the case of **Jagjit Singh v. Income-tax Officer* [2023] 149 taxmann.com 48 (Amritsar - Trib.)**, it has been held as under:

5. We heard the rival submission and relied on the documents available on the record. Considering the order of the revenue authorities the assessee was not able to submit the confirmation from the sundry debtor, M/s AD Traders. The confirmation is annexed with the paper book of the assessee APB page no. 3. The assessee received SBN during demonetization period on dated 10-11-2016. The amount was deposited in the bank account. The amount was received before the appointed day i.e., dated 31-12-2016. So, the assessee shall not in a violation for receiving SBN as per the Act. In Income-tax Act the source was unexplained before the revenue authorities as the evidence was not able to submit before any of the lower authorities by the assessee. Considering the factual matrix here we direct to set aside the matter before the ld.AO for necessary verification de novo. Both the revenue and the counsel of the assessee had not made any objection for remanding back the issue before the ld. AO. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the AO and adjudicated on merits in accordance with law. We order accordingly. Accordingly, the appeal of the assessee is remanded back to the ld. AO as per above terms.

12. Hence, in order to be fair to both the assessee and the Ld. AO, and respectfully following the orders of the coordinate Benches (supra), the assessment order is set aside to the Ld. AO with the direction that the reply filed by the assessee on the portal and the evidence in possession of the assessee as is mentioned in the Form No. 35 filed before the Ld. CIT(A) that the balance Rs.69,22,742/- may also be cash deposit before and after the demonetization period subject to reconciliation or payment due from debtors etc. should be considered and thereafter the

income/additions, if required may be made keeping in view the above judicial pronouncements and the departmental instructions and no addition may be made on this ground without proper verification. As regards observation of the AO that post 08.11.2016, the SBNs did not have any monetary value and, therefore, were unexplained money, the same is not correct as the holders of the SBNs were permitted to deposit the same in the bank/before the RBI till the specified date. Hence, even though they ceased to be legal tender, the same did not lose their intrinsic value. At the same time, the Ld. AO cannot treat the deposit both as part of turnover and also as unexplained deposit. As the income has not been properly estimated and even though the assessee is not pressing the ground of appeal relating to estimation of income on the excess turnover, we deem it proper that the entire assessment order is set aside to the Ld. AO to be made de novo and with the direction that the reply filed on the portal as well as the subsequent replies and evidence, if any, in possession of the assessee may be examined and thereafter, the income may be assessed. The assessee shall produce all required evidence before the AO as and when called for and shall not seek any unnecessary adjournment. Thereafter, the AO shall pass an order in accordance with the facts of the case. Hence, ground no. 3 of the appeal of the assessee is allowed for statistical purposes.

13. As regards the sum of Rs.2,13,086/- during the course of the appeal, the assessee did not press for relief on this account. However, as is being claimed that the excess deposits were out of the receipt from debtors etc. the AO is directed to assess the income in accordance with law. Therefore, this ground of appeal is also allowed for statistical purposes.

14. Ground nos. 1, 2 and 5 are general in nature and do not require separate adjudication.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd July, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 23rd July, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A), NFAC, Delhi
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order
Assistant Registrar
ITAT, Kolkata Benches, Kolkata