



IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH PUNE
BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 051/PUN/2024

Assessment Year : 2017-18

Vinayak Janrao Kolasakar
1, Godavari Vihar Society,
Ramwadi, Panchawati, Nasik-422003.
PAN: ACLPK3569R.

..... Appellant

V/s

The Income Tax Officer,
Ward-1(3), Nashik.

..... Respondent

Appearances

Assessee by : Mr Pramod Shingte ['Ld. AR']

Revenue by : Mr Umashankar Prasad ['Ld. DR']

Date of conclusive Hearing : 23/07/2024

Date of Pronouncement : 23/07/2024

ORDER

PER G. D. PADMAHSHALI, AM;

The assessee is in appeal against the DIN & Order No. ITBA/NFAS/S/250/2023-24/1057868559(1) dt. 10/11/2023 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] by the National Faceless Appeal Centre ['NFAC' hereinafter] passed which in turn confirmed the order of assessment passed u/s 143(3) of the Act by the Income Tax Officer, Ward-1(3), Nashik ['AO' hereinafter] anent to assessment year 2017-18 ['AY' hereinafter];

2. **Tersely stated the facts of the case are that;** the assessee is an individual engaged in the wholesale & retail business of trading of grocery items. The income tax return ['ITR' hereinafter] filed by the assessee declaring total income ₹3,74,280/-



was selected for scrutiny under CASS. In the event of assessee's failure to explain nature and source of 'Special Bank Note' ['SBN' hereinafter] ₹38,09,000/- deposited into bank account maintained with 'Nagar Urban Co-op. Bank Ltd.' ['NUCBL' hereinafter] during the period of demonetisation, the Ld. AO treated the same as unexplained u/s 68 of the Act and accordingly framed the assessment u/s 143(3) of the Act and assessed the total income at ₹41,83,280/- Aggrieved assessee unsuccessfully contested the former addition in an appeal before Ld. NFAC.

3. Aggrieved by the order of first appellate authority the assessee came in present appeal with a solitary substantive ground as;

1. On the facts and the circumstances of the case and in law, The Learned Assessing Officer erred in making an addition of Rs. 38,09,000 by invoking provisions of section 68 of IT Act, being cash deposits made in Bank account after 18/11/2016, by ignoring closing cash balance on the said date and other documentary evidences brought on record, your appellant prays for deletion of entire addition.

4. Heard rival parties and subject to rule 18 of ITAT-Rules 1963 perused material placed on record and considered the fact & circumstances of the case in the light of settled legal position and case laws relied upon.

5. We note that, assessee during the course assessment proceeding made a written submission vide letter dt. 27/05/2018 admitting thereby that he had accepted the SBN/cash from the unidentified customers. The same were deposited by him in his bank account maintained NUCBL in piecemeal over the declared period of demonetisation till December, 2016. Upon the comparative verification of return of income, cash book and bank account statement for AY 2016-17 & 2017-18, the Ld.



AO came to conclusion that the pattern of deposits were abnormal and were inconsonance with the human tendency, therefore held same as unexplained and brought to tax in the hands of assessee. When the matter travelled up in first appeal, the Ld. NFAC further analysed facts and noted the eclectic gap in cash balances ₹33,80,862/- held as on 31/03/2016 i.e. at the commencement of previous year relevant to assessment year under adjudication and as against the cash balance ₹71,29,606/- held as on 08/11/2016 the day demonetisation announced by the Hon'ble Prime Minister of India. While placing reliance of Hon'ble Apex Court in the case of '*CIT Vs Durga Prasad More*' [1972, 82 ITR 540] the Ld. NFAC turn blind eye to the affidavit placed on record by the assessee has confirmed the addition in line with the findings of Ld. AO, observing that, having regards to scanty 1.85% of net income/profit earned by the assessee from the reported sales ₹2,02,59,810/- it was beyond reasonable doubt that, the cash balance held as on 08/11/2016 was unrealistic.

6. We note that, in the event of failure on the part of assessee to produce purchase details, bank statements and cash reconciliation statement so has to establish balance as held at the 08/11/2016 the both the tax authorities below failed to arrive at reasonable conclusion as to whether the sum of SBN deposited into bank account was actually originated or earned/generated out of genuine business transactions and such transactions finds place in the audited financial statement of the assessee. Both the authorities in our considered view merely carried-away by the written letter placed on record which admitted the fact during the course of assessment that the such deposited SBN were earned/received by the assessee from his unidentified customers, which however retracted by the assessee subsequent to culmination of assessment.



7. We further note that, at the stage of assessment as well first appeal there was much less comparative verification of cash book, sales effected, purchases made and balances of sundry debtors & creditors and other items from the audited financial statement and returns of income filed for the year under consideration with that of immediate preceding previous year. The conclusion drawn by both the tax authorities below, in our considered view is not supported by judicious exercise but based merely on preponderance of human probability, hence cannot be countenanced. In the event we deem it fit to set-aside the impugned order and remand the matter back to the file of Ld. NFAC for de-novo adjudication in the light aforesaid direction and pass a speaking order in terms of s/s (6) of section 250 of the Act after conducting comparative analysis from audited financial statements, books of accounts, other records and returns filed for the AY 2017-18 & 2016-17, ergo ordered accordingly.

8. **The appeal in results is ALLOWED FOR STATISTICAL PURPOSES.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday, 23rd July, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 23rd July, 2024.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT Concerned.

4. The CIT(A)/NFAC Concerned.

5. DR, ITAT, 'SMC' Bench, Pune

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलार्थी न्यायाधिकरण, पुणे / ITAT, Pune.

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER