

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI

BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.910/Mum/2024  
(Assessment Year: 2017-18)

<b>Ketan Anand Jadhav</b> Room No.2, Azad Nagar Waghri Pada, Gokhale Road, Mulund (E), Mumbai-400081 <b>PAN: ARXPJ4252F</b>	vs	<b>Assistant Commissioner of Income- tax, Circle 26(2), Mumbai,</b> Room no-320, Kautilya Bhavan, B.K.C., Bandra (E), Mumbai-400 051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Paras Savla  
Respondent by : Shri P.D. Choughule (All.CIT) SR DR  
  
Date of hearing : 25/07/2024  
Date of pronouncement : 29/07/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order 20.09.2023. The impugned order was emanated from the order of the Learned Assistant Commissioner of Income-tax, Circle-26(2), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act, date of order 29/12/2019.

2. The assessee has taken the following grounds of appeal:-

*"1. The Ld. CIT(A)/NFAC erred in confirming the additions to the extent of Rs.16,43,500/- made by Ld. AO, treating cash deposited in the bank account as unexplained cash credit under section 68 of the Income-tax Act.*

*2. The Ld. CIT(A) / NFAC and Ld. AO failed to grant sufficient opportunity to present the case. As principles of natural justice are grossly violated the additions are liable to be deleted.*

*3. The Ld. CIT(A) / NFAC failed to consider the details such as loans taken and given, loan confirmations, and loan ledger, submitted during appellate proceedings, and hence the additions have been confirmed on conjectures and surmises and \_ without any basis.*

*4. On merits, the Appellant denies its liability to the levy of penal interest under sections 234A, 234B and 234C. Hence, the interest levied may be directed to be deleted."*

*The appellant craves leave to add amend alter or delete any of the above grounds of appeal."*

2. The brief facts of the case are that the assessment was completed with an addition amount of Rs.49,50,548/- including the cash deposit during the demonetization period amounting to Rs.16,43,500/-. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) partly allowed the appeal of the assessee and sustained the addition only amount to Rs.16,43,500/- under section 68 of the Act. Being aggrieved on the appeal order, the assessee filed an appeal before us.

3. The Id.AR first invited our attention to assessment order para 5.2 which is reproduced as under: -

**“5.2 Repayment of loan in cash:**

*The assessee has received repayments from the following parties in cash:*

<i>Name of the party</i>	<i>First repayment date</i>	<i>Last repayment date</i>	<i>Total Repayment</i>
<i>Sarjerao Jadhav</i>	<i>05.09.2018</i>	<i>01.10.2016</i>	<i>5,00,000</i>
<i>Ansar Ali Arfan Ali Shaikh</i>	<i>10.04.2016</i>	<i>01.10.2016</i>	<i>5,36,563</i>
<i>Kisahore Jadav</i>	<i>15,04.2016</i>	<i>20.09.2016</i>	<i>2,00,000</i>
<i>Dinkar Solat</i>	<i>20.04.2016</i>	<i>1.10.2016</i>	<i>3,56,000</i>
<i>Swapnil Jadhav</i>	<i>Details not available</i>	<i>Details not available</i>	<i>3,00,000</i>

*Out of above total repayment, Rs. 11.43,5007- has been deposited in bank on 13.11.2016. It is beyond reasonable comprehension how the assessee received repayment much prior to demonetisation period but never chose to deposit even a single rupee in his bank account. The assessee has not offered any reasonable explanation as to why such amount en-cash has been retained by him for such long duration and why he chose to deposit the same only after the demonetisation was announced. Therefore, it appears to be a convenient cook up in order to explain the source of deposits. Hence, the said amount is added to total income of the assessee by invoking provisions of section 68 of the IT Act, 1961.*

*Without prejudice, provisions of section 271 DA of the Act are to be invoked for violation of section 269ST of the Act. A separate reference is made to the respective Assessing Officers of the said parties to invoke provisions of section 269ST in their case."*

4. The Ld.AR argued that the assessee had given the loan to 5 parties as mentioned above, through banking channel. All the amount are paid before demonetization period in cash. The details of loan are as follows: -

S.No.	Name	Issue/ balance of loan
1	Sarjerao Jadhav	29/08/2016
2	Kishore Jadhav, B/f from earlier year	01/04/2015
3	Dinkar Solat	17/06/2016
4	Ansar Ali Arfan Ali ShaikhB/f from earlier year	30/03/2016
5	Swapnil JadavB/f from earlier year	Multiple transactions

5. The Ld.AR argued that those amounts are paid through banking channel to the loan debtors, but they started paying by cash. The cash was deposited in bank and the entire amount was added back with total income of the assessee U/s 68 of the Act. Further, the Id.AO issued the notice under section 271DA for violation of provisions of section 269ST of the Act. Both the sections i.e. section 68 and 269ST cannot be implemented together which goes to contrary of facts.

6. The Id.DR vehemently argued and only relied on the order of revenue authorities.

7. We heard the rival submission and considered the documents available in the record. The addition was made for depositing cash during the demonetization period. The source of the cash was duly explained by the assessee before the Ld.AO. In the appeal order, the Ld.CIT(A) is silent about the deposit of cash in bank which was received from the loan debtors. The Ld.AO, on the other hand, invoking section 68 of the Act has treated the cash amount as unexplained money then section 269ST cannot be applied. When the cash transaction is accepted, the provision of section 269ST will not be applicable. The confirmation loan-debtors related to payment cash are annexed in **APB pages 21 to 26**. Out of five loan-debtors, two loan-debtors, Mr. Sarjerao Jadhav and Mr. Dinkar Solat are only related to current years and other loan-debtors are brought

forward from earlier years. Both the assessing and appellate authority have not adjudicated the issue in thoughtful manner. In our considered view, we remit this issue to the file of the Id.AO to verify the loan debtors' amount to Rs.16,43,500/-. Further, the AO is directed to verify the cash transaction of the assessee with the loan debtors, which the assessee deposited in the bank account. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside assessment proceeding and the documents or evidence needs to be filed in his support, should be allowed to file during the set aside proceeding.

8. In the result, appeal bearing **ITA No 910/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 29<sup>th</sup> day of July, 2024.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 29/07/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,  
(Asstt. Registrar), **ITAT, Mumbai**

