

**IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH,  
MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 132/Mum/2024  
(A.Y. 2017-18)**

Prashant Hariappa Kotian 806 C Wing, Sushila Baug, S.V. Road, Santacruz(w.), Maharashtra-400054	v/s. बनाम	ITO, Wd. 22(2)(5), Mumbai Room No. 320, 3 <sup>rd</sup> Floor, Piramal Chamber, Lal Baug, Parel, Mumbai-400012
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACVPK0150A</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Mahendra Sanghvi
Respondent by :	Shri Lieder Panicker

Date of Hearing	07.05.2024
Date of Pronouncement	26.07.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-29/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 15.11.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2017-18.

2. The assessee has raised following grounds of appeal:

*"1. The learned commissioner of Income Tax (Appeals) ["Ld. CIT (A)"] erred in confirming action of the learned Assessing Officer ["Ld. AO"] of making addition of Rs. 64,85,000/-, to the income of the Appellant u/s. 69A of the Income tax Act, 1961 ["the Act"], being cash deposits*

*made during demonetization period out of cash withdrawn from firms in which the appellant is partner.*

*2. While doing so, Ld. CIT (A) failed to appreciate that the Ld. AO has made addition:*

*i) Based on surmises, suspicion and conjecture;*

*ii) Taking into account irrelevant and extraneous considerations; and*

*iii) Ignoring relevant material and considerations as submitted by the Appellant.*

*3. The Ld. CIT (A) failed to appreciate that provisions of Section 69A of the Act cannot be invoked in the case of the appellant as the appellant does not maintain books of account and the cash deposits are made in regular accounts. disclosed bank*

*4. The Ld. CIT (A) ought to have appreciated that the source of such cash deposits is duly explained.*

*5. The Ld. CIT (A) failed to appreciate that no opportunity of being heard was allowed to the appellant.*

*6. The Ld. CIT(A) relied on irrelevant judicial pronouncements.*

*7. The Ld. CIT(A) failed to provide opportunity of Personal hearing.”*

3. Brief facts of the case are that the assessee filed return declaring nil income for Ay 2017-18. The case was selected for complete scrutiny. During the year, the assessee has shown to be a partner in two partnership firms viz. M/s. Bharat Boring Works and M/s. Bharat Metalizing & Engineering Works. It was noticed that deposits amounting to Rs. 35,92,881/- were made during the demonetization period i.e. from 09.11.2016 to 30.12.2016 in the bank accounts of the assessee. The assessee submitted that he had made aggregate cash deposits of Rs. 64,85,000/- during the demonetization period out of cash withdrawn from aforesaid firms. The AO rejected the assessee's explanation mainly on the ground that the assessee had not furnished proof of consent of the partners of the firms approving these withdrawals along with relevant



documents to support his claim. Addition of Rs. 64,85,000/- was accordingly made u/s 69A of the Act.

4. Ld. CIT(A) dismissed the assessee's appeal after holding that the assessee had failed to offer any satisfactory explanation about the source of cash deposits.

5. Before us, the Ld. AR has submitted that the cash was withdrawn from the firms and kept at home because arbitration proceedings were going on for the dispute between the partners. In support of this claim a copy of the arbitration award dated 03.04.2018 has also been filed. It has further been claimed that the assessee had to paid Rs. 3,00,00,000/- to the other partners in terms of this award.

6. The source of cash withdrawals from the firms has been stated to be on account of regular withdrawals of cash from the bank accounts of the firm. Copies of the firm's bank accounts have also been furnished to show regular cash withdrawals.

7. On the other hand, Ld. DR has also filed written submissions stating that the cash books of the firms filed by the assessee do not reflect true state of their financial affairs. The cash books and other financial statements are not authenticated and endorsed by any partner of the firm or any chartered accountant. The claim of the assessee that he had withdrawn cash from the partnership firms is not supported with any proper documentary evidences.



8. We have carefully considered the rival submissions. It is seen that the facts regarding dispute between the partners and the subsequent arbitration award were not submitted before the AO at the time of the assessment. We, therefore, deem it proper to remand back the matter to the AO for a fresh consideration, after taking into account the submissions made by the Ld. AR. The assessee shall be given due opportunity to substantiate its claim and the assessee is also directed to furnish the requisite evidences before the AO.

9. In the result, the appeal of the assessee is allowed for statistical purpose.  
Order pronounced in the open court on 26.07.2024.

**Sd/-**

**AMIT SHUKLA**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 26.07.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,



*ITA No. 132/Mum/2024*  
*A.Y. 2017-18*  
*Prashant Hariappa Kotian*

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**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**