

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 398/MUM/2024
Assessment Year: 2017-18**

Vaibhav Pankaj Shah,
60-B, Dolat Bungalow, East West
Road No. 2, Vile Parle (West),
Mumbai-400049.

**PAN NO. AALPS 8652 B
Appellant**

Vs. ACIT, Circle 25(3),
232, 2nd floor, Kautilya
Bhavan, C-41 to C-43, G
Block, BKC, Bandra (East),
Mumbai-400051.

Respondent

Assessee by : None
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 10/07/2024
Date of pronouncement : 19/08/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 30.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:



1. *In the facts and circumstances of the case and in law, the Learned National Faceless Appeal Centre (NFAC), CIT (Appeals), Mumbai has erred in passing the impugned order dated 30.11.2023 under section 250 of the Act without providing personal hearing to the appellant thereby grossly violating the principles of Natural Justice.*
2. *In the facts and circumstances of the case and in law the Learned National Faceless Appeal Centre (NFAC), CIT (Appeals), Mumbai has erred in sustaining the addition of Rs. 54,50,000/- being cash deposits as unexplained cash credit under section 68 of the Act.*
3. *In the facts and circumstances of the case and in law the Learned National Faceless Appeal Centre (NFAC), CIT (Appeals), Mumbai has erred in sustaining the addition of Rs. 54,50,000/- being cash deposits during demonetization period ignoring the fact that the said amount is already assessed to tax in the assessment proceedings of the respective Assessment Years i.e. AY 2009-10, AY 2010-11, AY 2013-14 and AY 2014-15 thereby resulting in double taxation.*

2. Briefly stated, facts of the case are that the assessee filed return of income on 30.10.2017 declaring total income at Rs.1,18,70,890/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The Assessing Officer on the basis of the information in possession of the Income-tax Department asked the assessee to explain source of cash deposit of Rs.54,50,000/- in ICICI Bank Ltd. on 12.11.2016 (i.e. during the demonetization period). The assessee explained that said cash was generated on account of bogus donations claimed u/s 35AC and 35AC(ii) of the Act, under which cash was received back from Trusts, against the cheque issued to them for donations. The assessee submitted that it wished to participate in Income Disclosure Scheme (IDS), 2016 for declaring the said cash received against cheques issued for donation as undisclosed income, and therefore, the assessee filed such a request vide letter dated 30.09.2016 before concerned authorities



for IDS disclosure for assessment years 2009-10, 2010-11, 2013-14 and 2014-15 but said request of the assessee was rejected by the concerned authorities due to procedural restrictions. The assessee contented that said letter dated 30.09.2016 shows that cash received against cheques issued for donation was available with the assessee during demonetization period and same was deposited into bank. But, the Assessing Officer asked the assessee by way of show cause notice dated 01.12.2019 for substantiating the claim of cash received from various trusts in lieu of bogus donations by providing documentary evidences as against verbal claim, but the assessee failed in doing so. Accordingly, the Assessing Officer rejected the contention of the assessee and made addition u/s 68 of the Act following the decision of the Hon'ble Bombay High Court in the case of **Shri Arunkumar J Muchhala v. CIT, [2017] 85 taxmann.com 306 (Bombay)**.

3. On further appeal, the Ld. CIT(A) also upheld the addition relying the decision of the Hon'ble Supreme Court in the case of **Srilekha Banerjee v. CIT (1963) 49 ITR 112 (SC)**. The relevant finding of the Ld. CIT(A) is reproduced as under:

"4.4. Respectfully following the principles of law laid down by the apex court in the above cases, I consider the aspect of human probability. It cannot be untrue that when the assessee purportedly got lakhs of rupees in cash several years back, he definitely did not know that several years later there would come IDS or similar scheme where he could declare the amount and get amnesty. So, he definitely got the cash back with the intention of enjoying for personal purposes or investing somewhere for pecuniary benefits. He did not generate the money in such clandestine manner for nothing or for keeping idle at home. Secondly, keeping such huge sum of currency notes for 3 to 8 years would have made the notes



brittle and decaying also. These suffered the risk of burglary or loss otherwise too. So, for the reasons stated above, I feel that from the point of circumstantial evidence, appellant's claim is not reasonable or logical and hence not acceptable. Accordingly, I reject the arguments and dismiss the ground."

4. At the outset we may like to mention that on last occasion i.e. 01.07.2024, the Ld. counsel for the assessee appeared and the matter was adjourned to 23.07.2024 on her request, but today when the case was called for, neither any one attended nor any adjournment application was filed on behalf of the assessee. In the circumstances, we were of opinion that the assessee is not interested in pursuing the appeal and therefore, the appeal is adjudicated after hearing arguments of the Ld. Departmental Representative (DR) and examination of material available on record.

5. The main issue in dispute in the instant case is the source of the cash deposit of Rs.54,50,000/-. The assessee contented that he had made certain donations to few trusts engaged in research activity in assessment year 2009-10, 2014-15 and claimed weighted deduction for same u/s 35AC of the Income-tax Act, 1961(In short 'the Act'). The relevant table of the donations is available in para 6.2 of the assessment order, which is reproduced as under for ready reference:

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A.Y	Name of Trust	Deduction amount (cheque/NEFT) (Rs.)	Expenses deducted (Rs.)	Cash received (Rs.)
2009-10	Navjeevan Charitable Trust	31,00,000	3,10,000	27,90,000



2010-11	Navjeevan Charitable Trust	5,00,000	50,000	4,50,000
2013-14	School of Human Genetics & Population Health	10,00,000	1,50,000	8,50,000
2014-15	School of Human Genetics & Population Health	16,00,000	2,40,000	13,60,000
	Total	62,00,000	7,50,000	54,50,000

5.1 The assessee contended that above parties returned the amount of donation back to assessee in cash after deducting 10% commission. The assessee further contended that he had withdrawn the said deduction u/s 35AC and the paid taxes thereon in all those assessment years. Further stated that the cash, which was received back was kept with him and deposited in ICICI Bank on 12.11.2016 i.e. during the demonetization period. The lower authorities have rejected the contention of the assessee on the basis of the circumstantial. According to the Ld. CIT(A) in normal circumstances no one will keep the cash currency for 3 to 8 years and therefore, rejected the contention of the assessee as not reasonable or logical. Before us, no evidences have been filed in support of contention that assessee withdrawn the deduction in respect of corresponding years and cash was returned back by those trusts to the assessee. The assessee has not filed any such affidavit from those trusts supporting its contention that the cash was received back. In the facts and circumstances of the case, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we



uphold the same. The grounds of the appeal of the assessee are rejected.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 19/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 19/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai