

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.521/Ahd/2024  
(Assessment Year: 2014-15)

Ketkiben Mineshbhai Shah, M/57/679 Chitrakut Apartment, Sola Road, Ahmedabad-380013	Vs.	Income Tax Officer, Ward-1(2)(2), Ahmedabad
[PAN No.ALTPS3335G]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri S. N. Divatia, A.R.
<b>Respondent by:</b>	Shri Atul Pandey, Sr. DR

<b>Date of Hearing</b>	21.08.2024
<b>Date of Pronouncement</b>	29.08.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 22.01.2024 for Assessment Year 2014-15.

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

*“1.1 The order passed by U/s.250 passed on 22.01,2024 by NFAC, Delhi (in short “NFAC”) upholding the addition of Rs.9,36,300/- towards the cash deposit in bank account with Nutan Nagarik Sahkari Bank Ltd. as unexplained money u/s 69A of the Act is wholly illegal, unlawful and against the principles of natural justice.*

*2.1 The ld. NFAC has grievously erred in law and or on facts in not appreciating that there could not be compliance to the notices claimed to be issued because the mail id pertain to her tax consultant who had not informed her about any such proceedings. Thus, there was a sufficient cause for failure to comply with the notices claimed to be issued by NFAC.*

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2.2 *The ld. NFAC has grievously erred in not considering fully and properly the submission given by the appellant and confirming the same without any speaking or reasoned order.*

3.1 *The ld. NFAC has grievously erred in law and or on facts in upholding that the cash deposits to the extent of Rs. 9,36,300/- in account with Nutan Nagarik Sahkari Bank was unexplained income u/s.69A.*

3.2 *That the in the facts and circumstances of the ld. NFAC ought not to have upheld the addition of Rs.9,36,300/- in respect of the cash deposits to the extent of Rs. 9,36,300/- in account with Nutan Nagarik Sahkari Bank was unexplained income u/s.69A.*

3.3 *Without prejudice to the above and in the alternative the impugned addition made by AO and confirmed by NFAC is highly excessive and calls for substantial reduction by invoking the provisions of sec.44AD.*

*It is, therefore, prayed that the additions upheld by the NFAC may kindly be deleted.”*

3. The brief facts of the case are that the assessee is engaged in the business of retail trade merchandise of clothes and garments on semi-retail basis for the year under consideration. The assessee did not file his Return of Income for A.Y.2014-15.As per information generated through AIR, the case was re-opened for scrutiny by the Assessing Officer. Notice u/s 148 of the I.T. Act was issued on 16/03/2019, however, in response to the notice u/s 148 the assessee did not file return of income. In response to the notices issued to the assessee, the assessee neither replied nor produced any document. The Ld. Assessing Officer observed that the assessee had entered huge financial transaction during the year under consideration as there were voluminous financial transactions (deposits) of Rs.9,36,300/- in the bank account held by the assessee with Nutan Nagarik Sahakari Bank Ltd. resulting into substantial income generated by way of utilization of said funds. There were huge cash transactions in the bank account of the assessee, however the assessee had not filed return of income for the year

under consideration. In view of the above, a show cause notice was issued by the Assessing Officer as to why the cash of Rs.9,36,300/- deposited in Nutan Nagarik Sahakari Bank Ltd. should not be treated as unexplained money u/s. 69A of the Act and added to your total income for the year under consideration. In response to the show cause, the assessee did not file reply nor filed return of income. Accordingly, the Ld. Assessing Officer held that since the assessee failed to give any explanation about the nature and source of cash deposits in the bank account held by the assessee with Nutan Nagarik Sahakari Bank Ltd, hence the value of cash deposits, appearing in the Bank Account is deemed to be the unexplained money u/s 69A of the Income Tax Act, 1961 and was added to the total Income of the assessee. Penalty proceeding u/s 271(1)(c) of the IT Act were initiated separately for concealment of income.

4. In appeal before Ld. CIT(Appeals), the assessee submitted that the assessee is a small business owner engaged in the retail trade of clothes and garments and has been operating on a semi-retail basis for the year under consideration. During this period, the assessee has deposited cash into their bank account, with the majority of sales being conducted in cash and purchases made through banking channels. Due to their relatively low income, which does not exceed the basic exemption limit, the assessee did not maintain books of accounts and also did not file income tax return. The assessee's case was selected for scrutiny assessment under the faceless assessment process. However, due to the notices being sent to the consultant's email address instead of the assessee's personal address, the assessee was unaware of the proceedings and did not submit a reply on the

e-proceeding portal. The case was subsequently decided without any postal notice being sent to the appellant's address, violating the basic conditions for service of notice. Additionally, due to COVID-19 pandemic the assessee was unable to comply with tax obligations. With regards to addition of unexplained cash deposits under Section 69A, amounting to ₹9,36,300, the assessee submitted that the cash deposited was used to pay vendors and suppliers. The assessee submitted bank statements in support of its claim. The assessee argued that even if a higher profit rate of 20% was considered with respect to these cash deposits, income of the assessee would still be below the basic exemption limit. The assessee submitted that if income were to be computed under Section 44AD of the Act, which provides for a presumptive taxation method for small businesses, income of the assessee would be ₹74,904 at 8% and ₹1,87,260 at 20%, both of which are below the exemption limit.

5. However, Ld. CIT(Appeals) dismissed the appeal of the assessee, by upholding the order of the Ld. Assessing Officer, with the following observations:

*“5.11 During the course of appellate proceedings the appellant submitted written submission wherein it has contended that the appellant was engaged in retails trade of garments and clothes. The appellant has further stated he has not maintained any books.*

*5.12 In view of the above, it is held that the evidences filed by the appellant during the course of appellate proceedings are not reliable and they do not extend any credibility to the deposit of cash in the bank account or the genuineness of the transaction. Further, the AO had made clear observation in the assessment order that the source of the cash deposit could not be verified. Hence, the AO has rightly held the cash deposited in the bank during as appellants own money.*

*5.13 In view of the discussion in the preceding paragraphs, I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the*

*absence of any meaningful and worthwhile submissions/documentations even during the instant appellate proceedings, to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order. It is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014]. The addition of Rs.9,36,300/- u/s 69A of the Income Tax Act, 1961 made by the AO is sustained. As a result, the ground No. 1&2of the appeal are dismissed.*

6. *In the result, the appeal filed by the appellant is treated as dismissed.”*

6. Before us, the counsel for the assessee submitted that firstly, all notices issued by the assessing officer was sent to the e-mail ID of the erstwhile consultant of the assessee and therefore, the assessee was unable to comply with the said notices, issued during the course of assessment proceedings. Secondly, the counsel for the assessee drew our attention to written submissions, along with various details filed by the assessee before Ld. CIT(Appeals) along with the bank statement, for the perusal of the Ld. CIT(Appeals) which were omitted to be considered by him. Further, the counsel for the assessee submitted that the assessee did not file return of income for the impugned year under consideration owing to the minuscule income earned by the assessee, which was falling below the taxable limit. The counsel for the assessee drew our attention to page 33-34 of the paper book and submitted that all relevant details were filed by the assessee before the Ld. CIT(Appeals) for his consideration, which were omitted to be considered. Further, the counsel for the assessee submitted that given the smallness of the business of the assessee, even if the tax were to be computed under section 44AD of the Act, then also the income of the assessee would be below the taxable limit. Additionally, even if one were to presume the taxable rate of 20% of the total receipts deposited in the bank account of the assessee, even then the income of the assessee would fall

below the taxable limit. Counsel for the assessee drew our attention to pages 23-24 of the paper book and submitted that the assessee had also furnished returns of income filed by the assessee for assessment year 2012-13 and assessment year 2013-14 and from the same it is apparent that the assessee is a small retailer/dealer in garments and the assessee has been earning minor income for the impugned years under consideration.

7. Accordingly, looking into the instant facts, it is a fit case where the additions made in the hands of the assessee are liable to be deleted.

8. In response, DR placed reliance on the observations made by the assessing officer and Ld. CIT(Appeals) in their respective orders.

9. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, the submissions of the assessee along with bank statement filed by the assessee during the course of appellate proceedings before Ld. CIT(Appeals), the income tax returns for various years filed by the counsel for the assessee before us for our perusal, in our considered view, it is a fit case where the addition made by the assessing officer is liable to be deleted. This is for the reason that the assessee is a trader in garments on semi-retail basis and is carrying on business on a small scale. The assessee did not file the return of income for the impugned year under consideration owing to the minor income earned by the assessee as a result of which the taxable income of the assessee was falling below the prescribed taxable limit and hence no tax was payable by the assessee for the impugned year under consideration. Further, the counsel for the assessee has also submitted that the assessee could not cause

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appearance before the assessing officer since the notices were issued at the email address of the erstwhile consultant of the assessee and therefore, the assessee could not respond to such notices. Accordingly, looking into the instant facts, the additions made by the assessing officer directed to be deleted and the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

<b>This Order pronounced in Open Court on</b>	<b>29/08/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 29/08/2024

TANMAY, Sr. PS

**TRUE COPY**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad