

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.495/Ahd/2024
Assessment Year: 2017-18**

The Income Tax Officer, Ward – 3(3)(5), Ahmedabad.	Vs.	Shree Vishnu Saw Mill, B-503, Pratyaksh Kar Bhavan, Panjarapode, Ahmedabad – 380 -014. [PAN – AAHFS 2319 H]
(Appellant)		(Respondent)
Assessee by	Shri B.K. Patel, CA & Shri Chirag Raval, CA	
Revenue by	Shri Sanjay Kumar, Sr. DR	
Date of Hearing	10.07.2024	
Date of Pronouncement	04.09.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Revenue against order dated 31.01.2024 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. The Revenue has raised the following grounds of appeal :-

- (a) *The Ld. CIT(A) has erred in law and on facts in quashing the assessment order.*
- (b) *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.14,14,000/- made by the AO, on account of cash deposited during the demonetization period.*
- (c) *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,00,000/- made by AO, on account of cash deposited during the period other than demonetization.*
- (d) *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.80,61,208/- made by AO, on account of unexplained credit entries in back accounts other than cash deposits.”*

3. The assessee was a partnership firm engaged in the business of Saw Mill having PAN AAHFS 2319H. Subsequently, the case was taken up for scrutiny and the Assessing Officer observed that there are cash deposits to the tune of Rs.14,14,000/- for the relevant Financial Year including the demonetisation period. The Assessing Officer also observed that there were also credit entries amounting to Rs.80,61,208/-. As per the Assessing Officer, since both the credit and cash deposits were not properly explained, added the deposits to the tune of Rs.99,75,208/- under Section 69A read with Section 115BBE of the Income Tax Act, 1961, thus completed the assessment ex-parte.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) was not right in quashing the assessment and deleting the addition of Rs.14,14,000/- on account of cash deposits during the demonetisation period as well as additions of Rs.5,00,000/- during the period other than demonetisation period. The Ld. DR further submitted that the CIT(A) was not right in deleting the addition of Rs.80,61,208/- on account of unexplained credit entries in the bank account other than cash deposits.

6. The Ld. AR submitted that the firm which was a partnership firm was dissolved w.e.f. 01.04.2016 vide written dissolution deed dated 21.04.2016 and intimation for dissolution was made with a PAN cancellation letter alongwith dissolution deed as on 28.07.2017 i.e. before start of assessment proceedings for Assessment Year 2017-18. The Ld. AR further submitted that after the dissolution, one of the partners continued business as a proprietary concern and had continued bank account of the firm only for operational exigencies in the proprietary concern as mentioned in the order of the CIT(A). The Ld. AR further submitted that all transactions relating to the Bank transactions including cash deposits were recorded in the property book as the business in the name of Shree Vishnu Saw Mill which was continued as a proprietary business and the same included due compliance as well as recoding of the transactions in the books and filing of the return of income which was carried by the proprietary concern. Thus, the Ld. AR submitted that income was already considered in the proprietor which

was in fact existing at the point of assessment year in question and the same transactions cannot be considered as income as well as cannot be dragged to tax in partnership which was not even in existence at the relevant period. The Ld. AR submitted that these transactions cannot be said to be of the partnership firm and the same cannot be taxed twice when it was already taxed in the hands of the proprietary concern. The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that before the CIT(A) the assessee has filed all the details including that of the details related to dissolving of the partnership firm which was there on record prior to the proceedings related to assessment which was commenced by the Assessing Officer. This dissolving of partnership firm was totally ignored by the Assessing Officer at the time of assessment proceedings. These documents were there before the CIT(A) alongwith component of addition which was made by the Assessing Officer with the evidence that the said cash deposit as well as the credit entries were already reflected in the proprietary concern's books of account and has been offered for tax accordingly. The CIT(A), after taking cognisance of the additional evidences, has rightly held that the income was already considered in the hands of the partnership and, therefore, the same transaction cannot be taxed again in the non-existent partnership firm though the partner had continued the same bank account of the firm due to operational exigencies which is not right at any stage and imagination to tax again the entire credit of the bank account without telescoping or verifying the same with the proprietor's books of account. Thus, once the partnership itself is a non-existent entity, the assessment itself become null and void at its inception. Thus, the CIT(A) has rightly deleted the additions. There is no need to interfere with the finding of the CIT(A).

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 4th September, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 4th day of September, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad