

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC' BENCH, MUMBAI**

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 950/MUM/2024  
(Assessment Year: 2017-18)**

**Dinesh Naran Patel, HUF**

A/2 K.K. Smriti, New Maneklal Estate,  
Ghatkopar (West), Mumbai – 400086.  
[PAN: AACHD4765M]

..... **Appellant**

Vs

**Commissioner of Income Tax  
Ward 27(1)(4),**

Navi Mumbai, Maharashtra,  
Mumbai- 400703

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Ms. Mamta Kholiya  
For the Respondent/Department : Shri Himanshu Sharma

**Date**

Conclusion of hearing : 04.07.2024  
Pronouncement of order : 24.09.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order dated 04/01/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 05/12/2019, passed by the Commissioner of Income Tax (Appeals) under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').

2. The appellant has raised following grounds of appeal :

"1. *The Learned Assessing Officer and Honorable Commissioner*

*of Income Tax (Appeals) erred in making an addition U/s 69A of the Income Tax Act, of Rs. 13,89,500/-, in respect of Cash deposited by Appellant Assessee to his bank account during Demonetization period, even though the same had been credited to the books and considered as Income by the Assessee from year to year, assessing officer considered the same as 'Unexplained' on presumptions, suspicions and surmises, disregarding direct evidences placed on record and furnished by the.*

- 2. The Appellant Assessee deposited cash during Demonetization period, which formed part of their Income earned during the concerned year as well as in past periods, in the nature of 'Agricultural Income' as well as 'Compensation from use of Shuttering Materials' and which they genuinely offered for tax every year.*
- 3. The learned assessing officer erred in appreciating the fact that, it is not necessary that all the income if earned in cash, should be treated as 'Unexplained' under section 69A or section 68 of the income Tax Act 1961. They triggered the provisions of section 115BBE of the act, to charge the Income at special rates, even though all the documents to substantiate the genuineness of transactions entered were submitted by the appellant.*
- 4. Appellant cannot be said to have entered into in genuine transaction, merely because income is earned in cash, specially, when dealing in cash is the only option available.*  
  
*Further, there is nothing under the Act debarring assessee from selling agricultural produce in cash or earning any other income in cash, so far as the same has been validly declared in his books of accounts and offered for tax purpose.*
- 5. Thus addition made under section 69A as Income from Other Sources are not "Unexplained", even under section 68 of the Income Tax Act, 1961 and liable to be deleted on the above grounds.*
- 6. Since all the grounds of appeal are inter-linked, Honorable Commissioner of Income Tax (Appeals) took them together for adjudication.*

*The learned Commissioner of Income Tax (Appeals) agreed to the contentions of the Assessee on almost all the Grounds, however, they simply disallowed the opening cash balance as on 01/04/2014, without even asking for the details of the same, through the notices appellant received from the office of learned Commissioner of Income Tax (Appeals), dated 04/08/2023 and 20/12/2023, since both the notices had Blank Annexures, with no requirements from their end.*

*Appellant is filing Income tax returns since F.Y.1999-2000 and is having all the details of Cash-in-hand of Rs. 13,89,500/-, deposited to their bank account and as and when earned, it has been validly offered for tax purpose too."*

3. The relevant facts in brief are that the Appellant filed return of income for the Assessment Year 2017-18 declaring total income of INR 2,43,970/- on 15/10/2016. Subsequently, the case of the Appellant was selected for limited scrutiny on account of large value of cash deposit made during demonetizing period. During the assessment proceedings, the Assessing Officer noted that cash deposited aggregating to INR 13,89,500/- were made in the bank account of the Appellant, during the period commencing on 09/1/2016 and ending on 30/12/2016. The Appellant was asked to provide explanation regarding source of such cash deposit. In response to that the Appellant submitted source of cash deposit was cash aggregated for number of years in relation to agricultural income and income from leasing out shuttering material earned by the Appellant. The Appellant furnished summary of cash transactions as per books of account maintained by the Appellant from 01/04/2014 till 31/03/2017, and invoices/documents pertaining to agricultural produce/income. However, the Assessing Officer rejected the contention of the Appellant that source of cash deposit was the income earned by the Appellant which was declared in the return of income for the preceding assessment years. The Assessing

Officer observed that one of the bills furnished by the Appellant (i.e. Bill No. 716) for INR 1,75,519/- pertained to the subsequent financial year as the date mentioned on the invoice was 03/05/2016 and not 03/05/2015 as claimed by the Appellant. Taking note of the fact that no agricultural income was declared by the Appellant for the Assessment Year 2016-17, the Assessing Officer concluded that no agricultural income was earned by the Appellant. The Assessing Officer further observed that no details/invoices in relation to income earned from giving shuttering materials on lease were produced by the Appellant. On the basis of the aforesaid, the Assessing Officer made an addition of INR 13,89,500/- in the hands of the Appellant invoking provisions contain in Section 69A of the Act. However, the Assessing Officer also proposed alternative addition under Section 68 of the Act, on a without prejudice basis, holding that even if it is presumed that credits in the bank account of the Appellant are treated as entries recorded in the books of account of the Appellant, the aggregate amount of cash deposit would still be treated as unexplained cash credit under Section 68 of the Act since the Appellant had failed to provide satisfactory explanation in respect of the same. Thus, the Assessing Officer made an addition of INR 13,89,500/-, being the aggregate amount of cash deposits made in the bank account of the Appellant during the demonetization period, in the hands of the Appellant

4. Being aggrieved, the Appellant preferred Appeal before the CIT(A) against the Assessment, Order dated 05/12/2019, passed under Section 143(3) of the Act. Before the CIT(A) the Appellant had filed summary of cash transactions which was rejected by the CIT(A). The CIT(A) took opening balance of cash (i.e cash available with the Appellant as on 01/04/2014) as 'Nil' observing that the Appellant had failed to provide any documentary

evidence for the same. Thus, the CIT(A) concluded that the Appellant had a negative cash balance as on 01/04/2016 and 31/03/2017 and therefore, the Appellant did not have sufficient cash balance to make deposit of INR 13,89,500/-. According to the CIT(A), the Appellant failed to provide explanation in relation to source of cash deposits, and therefore, the addition made by the Assessing Officer under Section 69 of the Act was confirmed by the CIT(A), vide order dated 04/01/2024.

5. Now the Appellant is before the Tribunal in appeal challenging the order, dated 04/01/2024, passed by the CIT(A) on the grounds reproduced in paragraph number 2 above.
6. We have heard both the sides and perused material on record. The primary contentions of the Learned Authorised Representative for the Appellant is that the CIT(A) had failed to take into consideration the submissions made by the Appellant. Inviting our attention to the notice issued by the CIT(A), the Learned Authorised Representative for the Appellant submitted that the Appellant was never asked to furnish any documentary evidence in relation to opening balance as on 01/04/2014. It was submitted that the Appellant had been filing its returns regularly since Assessment Year 2000-01. Agricultural income declared by the Appellant has been accepted by the Revenue. Before the CIT(A), the Appellant had submitted that there was no discrepancies in the bills of sale of agricultural produced furnished by the Appellant. The Appellant had also explained that bills/vouchers in support of income from leasing out of shuttering material could not be produced by the Appellant on account of the fact that the Appellant was leasing out shuttering material to small contractors and was earning meager income of around INR 17,000/- per annum from the same. It was vehemently

contended that despite providing all the explanation and supporting documents, Learned CIT(A) had rejected the contentions of the Appellant holding that the Appellant had failed to provide necessary documents/bills without even confronting the Appellant.

7. Per contra, the Learned Departmental Representative relied upon order passed by the Assessing Officer and CIT(A). It was submitted that the Assessing Officer had clearly pointed discrepancies in the documents furnished by the Appellant as well as the fallacies in the submissions made by the Appellant regarding earning of agricultural income. In this regard reliance was placed on paragraph 6 of the Assessment Order.
8. Having given careful considerations to the rival submissions and on analysis of the material on record, we find that the Appellant had primarily explained availability of cash for making cash deposits aggregating to INR 13,89,500/- by contending that the same were sourced from the agricultural income earned by the Appellant during preceding assessment year which has been declared by the Appellant in the return of income. It is undisputed position that the Appellant has been consistently filing return of income since the Assessment Year 2000-2001. The Appellant had furnished the following documents/details during the assessment proceedings to establish the genuineness of the transactions entered into and to substantiate source of cash income - copy of bank passbook along with Bank book, with explanation of transactions entered, copy of 7/12 Extract of Agricultural land (Survey No. 107/P1) at Koday (Mandvi), Kutch, Gujarat, owned by the Appellant showing 'Ownership details' as well as 'Details of Crops grown' during the concerned financial year (i.e.F.Y.2016-17) as well as two years prior to concerned

Financial year (i.e.F.Y.2015-16 and F.Y.2014-15), copies of invoices in respect of Agricultural income earned during the Financial Year 2016-17 of INR 7,19,519/-. We note that the fact that the Appellant owned agricultural land has also not been disputed by the Revenue. It is admitted position that for, both, Assessment Year 2014-15 and 2015-16, the Appellant declared agricultural income of INR 4,95,000/-. Even for the Assessment Year 2016-17, the Appellant had claimed agricultural income received during the relevant previous year. However, the same was inadvertently not disclosed separately in the return of income. The Appellant had filed before the Assessing Officer '7/12 Extract' giving year-wise bifurcation of agricultural products produced for the financial years 2014-15, 2015-16 and 2016-17. However, the same was rejected by the Assessing Officer. In our view, the return of income filed by the Appellant (wherein the agricultural income has been disclosed) cannot be rejected as not been substantiated by documentary evidence. Even if, the other contentions of the Revenue are accepted and income from shuttering of material and sale of agricultural produced made by the Appellant during the relevant previous year is not taken into account, the agricultural income earned by the Appellant in the preceding assessment year was sufficient to source the deposit of cash aggregating to INR 13,89,500/-. On perusal of the summary of cash transactions furnished by the Appellant [*forming part of the paper book*] for the period commencing from 01/04/2001 to 31/03/2017, it can be seen that the Appellant had earned agricultural income of more than INR. 30,00,000/- in preceding 10 assessment years. We further note that the CIT(A) has simply rejected the details of cash receipts/payments furnished by the Appellant and taken the opening balance as on 01/04/2014 as 'Nil' without even confronting the Appellant. We find that the notice of hearing dated 04/08/2023 and 20/12/2023 issued by

the CIT(A) were accompanied by Annexure which were blank. Thus, on perusal of the material on record, it is clear that the Appellant had sufficient agricultural income which had been declared in the return of income for the preceding assessment years which was not appreciated by the authorities below. Since the Appellant has been able to explain the deposit of cash in the bank account and cash credited in the books of account, neither the provisions contain in Section 68 of the Act nor the provisions contain in Section 69A of the Act can be attracted in the facts and circumstances of the present Case. Accordingly, addition of INR 13,89,500/- made under Section 69A of the Act is deleted. Our view draws strength from the decision of Delhi Bench of the Tribunal in the case of Shri Naresh Kumar Vs. The Income Tax Officer [ITA. No. 1760/Del/2018, dated 08/03/2019].

9. In view of the above, Ground No. 1 to 6 raised by the Appellant are allowed while other Grounds are dismissed.
10. In result, the present Appeal is allowed.

Order pronounced on 24.09.2024.

**Sd/-**  
**(Narendra Kumar Billaiya)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 24.09.2024  
Y.S.Patil, Sr.P.S.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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