



**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH PUNE**



**BEFORE HON'BLE SMT ASTHA CHANDRA, JUDICIAL MEMBER**

**And**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA No. 1385/PUN/2023**

**Assessment Year : 2017-18**

Vasant Hirachand Rathod

461, B-Ward, Bhawani Chambers,

Bhawani Mandap, Juna Rajwada,

Kolhapur-416002.

PAN: AEUPR6755D.

**.....Appellant**

**V/s**

The Income Tax Officer,

Ward-1(4), Kolhapur.

**..... Respondent**

**Appearances**

Assessee by : Mr Pramod Shingate ['Ld. AR']

Revenue by : Mr Arvind Desai ['Ld. DR']

Date of conclusive Hearing : 30/09/2024

Date of Pronouncement : 04/10/2024

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

This appeal of the assessee impugns the DIN & Order No. ITBA/NFAC/S/250/2023-24/1058147274(1) dt. 22/11/2023 passed u/s 250 of the Income-tax Act, 1961 ['the Act' henceforth] by the first appellate authority ['Ld. NFAC/CIT(A)' henceforth] passed which in turn upheld the order of assessment passed u/s 143(3) of the Act by the Income Tax Officer, Ward-1(4), Kolhapur ['Ld. AO' henceforth] for assessment year 2017-18 ['AY' henceforth].



2. **Briefly narrated the facts of the case are that;** the assessee is an individual who filed his return of income u/s 139(1) of the Act declaring total income at ₹3,87,570/- on 30/07/2017. The return of the assessee was selected for scrutiny vide notice dt. 14/09/2018 issued u/s 143(2) of the Act to verify '*abnormal increase in cash deposits made by the assessee during demonetisation period*'. In the event of assessee's effective failure to offer satisfactory explanation about nature & source of such cash of ₹46,53,000/- deposited during demonetisation, the Ld. AO treated same as unexplained money u/s 69A in the hand of assessee and brought to tax u/s 115BBE of the Act by an order framed u/s 143(3) of the Act. The first appeal against the aforestated assessment before the Ld. NFAC did yield no favourable results to the assessee.

3. Aggrieved by the orders of lower tax authorities, the assessee came in present appeal before the Tribunal u/s 253(1) of the Act on two effective grounds viz;

(1) *assessment was framed without putting the assessee to mandatory show cause notice (Ground no 1) and*

(2) *the assessment was framed disregarding the submission & fact that return was filed u/s 44AD of the Act (Ground no 3 & 4).*



4. During the course of hearing, the Ld. AR Mr Shingate raised like contentions & reiterated like submissions as were made in first appellate proceedings. *Per contra*, the Ld. DR relied upon the orders of tax authorities below. We have Heard the rival parties and subject to rule 18 of ITAT-Rules 1963 perused material placed on record, considered the facts in the light of settled legal position which are forwarded to the parties present.

5. We note that, for the year under consideration the assessee deposited total cash of ₹47.22Lakhs and ₹27.17Lakhs into his bank accounts maintained with ICICI bank and 'Panchaganga Nagari Sahakari Bank' ['PNSB' henceforth] respectively. Out of the total cash deposits, ₹46.53Lakhs cash was deposited during the demonetisation. When assessee's explanation that 'cash sales' & 'cash withdrawal from ICICI Bank' were the exclusive sources against such cash deposits did not inspire, the Ld. AO vide notice dt. 09/12/2019 issued u/s 142(1) of the Act and called upon the assessee to (a) furnish confirmation from respective customers to whom cash sales were made (b) other such documentary evidence in support thereof. In response thereto, the assessee stated that, since the return in his case was filed under presumptive taxation



u/s 44AD of the Act, no details were available with him as he was not required to maintained the same. In the absence of corroborative evidences in support of cash sales claimed to have been made by the assessee, the Ld. AO treated the same as unexplained money u/s 69A of the Act and accordingly famed the assessment. The assessee was indifferent in first appellate proceedings, therefore there was hardly any change in the findings & conclusion drawn by Ld. NFAC.

6. In adjudicating ground 2 & 3 first we note that, in addition to precursory business of manufacturing of gold article/ornaments, the assessee newly from October, 2016 ventured into retail trading of gold & silver ornaments etc. The cash deposited over and above the cash generated in former manufacturing business, was solitarily attributable to cash sales generated in October, 2016 from new venture. Though the assessee owing to presumptive taxation did not maintain any details for the purpose of assessment of tax, the names of customers along-with their addresses were reported immediately in response to compliance sought through Annual Information System [‘AIS’ henceforth] by the Revenue. When the veracity of such cash sales doubted by the respondent, same were



remained to be proved with corroborative evidences like (a) cash sales invoices (b) list of customers to whom cash sales were made with their KYC details etc., and (c) confirmation from such customers (d) and details of cash withdrawal made from ICICI bank/statements etc. The assessee was indifferent in first appellate proceedings, hence the result. During the course of assessment, first appellate and present proceedings the appellant continued his submission that the impugned cash deposits represents cash sales generated by him from trading of gold & silver ornaments, bullion & jewellery etc., therefore in our considered view the consequential burden was on the claimant appellant to conclusively prove its source as well nature with corroborative evidence beyond a reasonable doubt, which the appellant ostensibly failed. This burden fastened u/s 69A of the Act in our considered view if not proved owing to either (a) failure to lay corroborative evidences or (b) failure to explain satisfactorily, then the Revenue in view of Hon'ble Apex Court decision in '*Shashi Garg Vs PCIT*' [2020, 113 taxmann.com 93 (SC)] is entitled to treat the same as unexplained income u/s 69A of the Act and can assessed accordingly, which the tax authorities rightly did in this case.



7. On the other hand, the impugned order suggest that, in-spite of due opportunity the assessee failed to furnish details on records which led to adverse conclusion and as a result of which the appeal of the assessee failed. Thus, the appellant's failure to produce the former cogent evidences which could have discharge him from the onus conclusively was the sole reason behind the impugned addition. Having considered the factual matrix we are of the considered view that, the non-compliance was the sole driver which saddled the assessee with additional tax liability. Therefore, in the larger interest of justice we deem it fit to accord one more opportunity to the assessee by remanding the matter to explain the nature & source of cash sales with following bullet documents so as to enable the Ld. NFAC to vouch the veracity of the claims viz; (a) bank statements, (b) full details of customers to whom cash sales were made (c) letters of confirmation from such customers detailing cash purchases from appellant (d) cash sales tax-invoices (e) VAT/GST returns etc. The Ld. NFAC shall after vouching the former evidences decide the addition on merits and pass a speaking order in terms of s/s (6) of section 250 of the Act. Ordered accordingly. The ground no. 3 & 4 accordingly stands allowed for statistical purposes.



8. Adverting to first ground as a matter of last resort, the appellant raised a plea that, before culmination of assessment, the assessee was not put to show-cause notice thus the addition was made without enabling the assessee to refute, therefore the assessment in question deserves to be quashed. To drive this contention home, the appellant pressed into service the latest decision of Hon'ble Jurisdictional High Court in the case of '*Vivek Jaisingh Asher Vs ITO*' [2024, 162 taxmann.com 127 (Bom)]. Without disputing the former ratio, the Ld. DR Mr Desai dismantled the assessee's plea effectively proving to our satisfaction that unlike in the present case, the assessment in that case was framed u/s 143(3) r.w.s. 144B of the Act i.e., under faceless regime pursuant to provision of section 144B which came into effect from 01/04/2021. The case in hand did neither subjected to provisions of section 144B of Act nor was framed under faceless regime. *Au contraire*, pressing into service the decision of Hon'ble Apex Court in the case of '*MP Industries Vs UOI*' [AIR 1966 SC 671] the Ld. DR averred that, prior to insertion of section 144B of the Act, a show-cause-notice or personal hearing wasn't necessary, mere an opportunity to tender written



representation/submission was sacrosanct in ensuring compliance with principle of natural justice. Since in the present case the Ld. AO vide multiple notices issued u/s 143(2) and 142(1) of the Act granted the appellant assessee plentiful opportunities to discharge the burden fastened u/s 69A of the Act that *per-se* sufficient to suggest the assessment was completed after observing the principle of natural justice in its true spirit. The appellant could hardly dispute the inapplicability of judicial precedents pressed into service by him and counter the judicial precedents pressed into service by the Revenue by bringing any contrary decision to our notice.

9. In view of the aforestated discussion and by application ratio laid in '*MP Industries Vs UOI*' (*supra*), we find much-less merits in the contention of the appellant, thus in ground raised herein.

**10. In result the appeal is PARTLY ALLOWED FOR STATISTICAL PURPOSES.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday, 04th day of October, 2024

**-S/d-**

**ASTHA CHANDRA  
JUDICIAL MEMBER**

पुणे / PUNE ; दिनांक / Dated : 04th day of October, 2024

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

4. The CIT(A)/NFAC Concerned.

5. DR, ITAT, 'B' Bench, Pune

**-S/d-**

**G. D. PADMAHSHALI  
ACCOUNTANT MEMBER**

3. The Pr. CIT Concerned.

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.