

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 3883/Mum/2023
Assessment Year 2017-18

Asst. Commissioner of Income Tax, 1 st Floor, Mahan Plaza, Wayle Nagar, Khadakpada, Kalyan West.	vs.	Ishwarlal Holaram Mulchandani, Shop No. 3 and 4, Prakash Shopping Complex, Baba Dhani Ram Marg, Opp: Bank of Baroda Road, Ulhasnagar, Thane. PAN : AAPPM4148L
(Appellant)		(Respondent)

Assessee by : Shri Suresh Otwani,
Revenue by : Shri Krishnakumar, Sr.DR

Date of Hearing : 19/09/2024
Date of Pronouncement : 21/10/2024

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dated 24-08-2023 passed by Ld CIT(A) for AY 2017-18, wherein he has deleted the addition of Rs.4,60,09,541/- pertaining cash deposits made into the bank account of the assessee during demonetization period.

2. The assessee filed his return of income for the year under consideration declaring total income of Rs.33,90,790/-. The same was

taken up for scrutiny. It was noticed that the assessee has made cash deposit of Rs.4,60,09,541/- into his bank account during demonetization period. With regard to the sources for making the above said deposits, the assessee explained that he was proprietor of a concern named M/s Swamini fashions upto 31.3.2016. It was having sundry debtors and sundry creditors balance as on that date. It was submitted that the above said concern was converted into a Partnership Concern w.e.f. 1.4.2016. It was submitted that the assessee had collected money from sundry debtors outstanding as on 31.3.2016 and the same was deposited into the bank account during demonetization period. Even though the assessee furnished above said explanation with regard to the nature and source of deposits, yet he did not furnish any evidence to support the above cited explanation. Hence, the AO treated the above said deposit as unexplained money u/s 69A of the Act and added the same to the total income of the assessee.

3. In the appellate proceedings, the Id CIT(A) noticed that the assessee had deposited cash to the tune of Rs.15.15 crores in the financial year 2015-16, i.e., immediately preceding financial year. The above cash deposit was more than three times of deposit of Rs.4.60 crores made during the year. He also noticed that the proprietary concern was showing sundry debtors balance of Rs.10.46 crores and sundry creditors balance of Rs.13.47 crores. Based on these information, the Ld CIT(A) concluded that the sources of deposits cannot be doubted with. Accordingly, he deleted the addition and hence the revenue is aggrieved.

4. We heard rival contentions and perused the record. We notice that the Ld CIT(A) has deleted the addition on the basis of probabilities. However, the fact would remain that the assessee did not furnish copy of books of accounts of the proprietary concern for the financial year

1.4.2016 to 31.3.2017 in order to substantiate its claim that the collections made from sundry debtors were deposited into the bank account. There should not be any doubt that the initial onus to prove the deposits made into the bank account would lie upon the assessee only, which the assessee has failed to discharge. Hence, we are of the view that the Ld CIT(A) was not justified in deleting the impugned addition on the basis of probabilities.

5. The Ld A.R submitted that the assessee is having books of accounts of the proprietary concern for the financial year 1.4.2016 to 31.3.2017. He further submitted that the same could be produced before the AO, if an opportunity is given to the assessee. Accordingly, in the interest of substantial justice, we are of the view that the assessee may be provided with one more opportunity to present his case properly before the AO. Accordingly, we set aside the order passed by Ld CIT(A) and restore this issue to the file of the AO for examining it afresh. We also direct the assessee to furnish all the information and explanation to prove the nature and source of cash deposits made into the bank account. After hearing the assessee, the AO may take appropriate decision in accordance with law.

6. In the result, the appeal filed by the Revenue is treated as allowed.

Order pronounced in the open court on 21-10-2024

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai, Dated: 21-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "C" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai