

**IN THE INCOME-TAX APPELLATE TRIBUNAL “K(SMC)”
BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3352/MUM/2024
(A.Y. 2017-18)**

Rajkishore Maniyar 801/802, Apartment, H Goregaonkar Road, Grant Road, Mumbai 400 007, Maharashtra	Balkishan Shivtapi	v/s. बनाम	Income Tax Officer, Ward – 1(2)(4), Aaykar Bhavan, MK Road, Mumbai 400 020
स्थायी लेखा सं./जीआइआर सं./		PAN/GIR No: AACPM9799E	
Appellant/अपीलार्थी		..	Respondent/प्रतिवादी

Appellant by :	None
Respondent by :	Shri Kiran Unavekar, Sr. DR

Date of Hearing	11.11.2024
Date of Pronouncement	13.11.2024

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 25.04.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 30.12.2019 as passed by the Income Tax Officer, Ward-1(2)(4), Mumbai for the Assessment Year [A.Y.] 2017-18.

2. The assessee in the grounds of appeal has agitated addition of Rs. 14.95 lakhs being cash deposit as unexplained money. It is contended that the Ld. CIT(A) erred in upholding the addition.
3. Facts of the case are that in this case it was informed to the Ld. AO that during demonetisation period the assessee had deposited demonetized currency of Rs. 15,18,000/- in the bank account of M/s Ganpati Traders which is stated to the partnership firm, wherein, the assessee is one of the partners. However, it was found that one of the partners of the firm, the assessee had admitted that the firm was formed on 20.02.2014 and dissolved on 11.05.2014 in the same year. But, this information was not given to the bank. This firm continued to function as proprietorship concern of assessee and the bank account was maintained with the bank as a partnership firm with different PAN. Regarding the source of this cash deposit it was claimed before the Ld. Assessing Officer that the source was withdrawn from the earlier parties. The reply as submitted for the Ld. Assessing Officer is reproduced as below:-

“ a. I withdraw cash as per my business requirements.

b. I also maintain a minimum buffer cash for emergency requirements of the business and personal nature.



c. *My business had a turnover of approximately 57.48 crores in FY 2014-15, 18.87 crores in FY 2015-16 and Rs. 15.40 crores in FY 2016-17.*

d. *My cash balance on 31/03/2015 was Rs. 20.10 lakhs and on 31/03/2016 was Rs. 8.60 lakhs. Holding cash on hand is no crime and I have bonafide reasons for the same.*

e. *I have to maintain such balances for expenses, business and personal.*

Personal: *I also have senior citizen parents, my father is 80 years old and my mother is 75 years old. As you are aware that any medical emergency may arise at their age or as a matter of fact to me, my wife, or my children. Coming from a family of conservative thoughts, we always have cash on hand from 10 lakhs to 20 lakhs for both business or personal expenses.*

Business: *I need cash expenses for day to day activities and general conveyance expenditure on account of my sheer sales turnover. I have been maintaining cash on hand at this level for the last so many years without any questions.*

f. *As per your notice, you have stated that since my returns for AY 2016-17 and 2017-18 were filed in March 2018, the opening cash balance for FY 2016-17 is in doubt. I draw your attention to the*



balance sheet for 31/03/2015 attached herewith where the cash balance is Rs. 20.10 lakhs and the said return is filed on 31/10/2015. This itself sets a precedent of cash balance being maintained in the region of 10 to 20 lakhs. Thus now there should be no doubt about the genuineness of the opening balance of cash and the pattern of cash balance, cash withdrawal and expenses.

g. On the 8th November, 2017 the government announced demonetization of high value currency notes. The government gave a window from 8th November, 2017 to 31st December, 2017 to deposit all cash on hand comprising of high value of currency notes. When a lot of people were following bad practices I deposited all the cash I had in high value currency notes in the bank account. The government had promised no person with legit money will be troubled, questioned or harassed. I have always been a bonafide tax payer and followed the laws just like I did in the demonetization period. This notice is exactly what the government had promised will not happen.

h. I thus request you to abide by the government promises and not trouble me for depositing cash as directed by the government.

i. I also see that the cash deposited of Rs. 15,18,000/- is genuine and explained and raise my strongest objection to addition of the



same as unexplained money under section 69A of the IT Act, 1961 and the same been taxed as per the Section 115BBA of the said Act.”

4. It was also further submitted that the assessee opened an account in the name of partnership firm M/s Ganpati Traders with himself and employees as partners. The partnership firm was dissolved on 11.05.2014 and the firm was converted to sole partnership of the assessee with different PAN.
5. The Ld. AO, however, rejected the explanation of the assessee by holding that the said bank account was not maintained in the name of the assessee. Besides, he had not filed the returns for Assessment Years 2016-17 and 2017-18 in 27.03.2018. He failed to explain the delay in filing of the returns and therefore, opening cash balance of earlier order for assessment year 2017-18 was not beyond doubt. Besides the assessee failed to explain the nature of cash expenses claimed to be made from cash withdrawn from the bank credited as no business man will withdraw the cash from the bank account only to deposit the cash in the account, one fine day rather than spending it. Consequently, he invoked the provisions under section 69A of the Act, treating impugned amount of Rs. 14,95,000/- as unexplained money of the assessee.



6. It may be mentioned here that the Ld. CIT(A), while upholding the addition, has made detailed discussion from para 6.2 of the Appellate Order. In the para 6.7 he has finally observed that the assessee failed to bring on record incredible evidence or details whatsoever, in support of the grounds raised in the appeal, so as to controvert, the findings of the Ld. Assessing Officer. He has also stated that the assessee either did not respond to notice issued u/s 250 of the Act or responded partly but failed to discharge the onus to explain the nature and source of the deposits leading in to dismissal of the appeal filed.
7. We have duly considered all the relevant facts of the case. When the case was called out, it was not represented by anyone. The Ld. Sr. DR relied upon the orders of the lower authorities. We find that the assessee did not properly avail the opportunity of hearing before the appellate authority. However, there appears to be proper compliance before the Ld. AO. The Ld. CIT(A) has dismissed the appeal, on account of the fact that the assessee failed to furnish the relevant evidences in support of the grounds of appeal. We observe that no substantive hearing could take place. Therefore, consider it appropriate to remand the matter to the Ld. CIT(A) allowing him



opportunity of hearing and to furnish relevant evidences in support of its grounds of appeal.

8. The Ld. Sr. DR has not objected to the proposed remand in the course of hearing. Therefore, in the interest of justice and fair-play the appeal is set aside and sent back to the Ld. CIT(A) to pass a fresh order after allowing one final opportunity of hearing to the assessee.
9. In view of the above facts and circumstances, the appeal is therefore, allowed for the statistical balances.

Order pronounced in the open court on 13/11/2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.11.2024

Lubhna Shaikh / Steno

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

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



सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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

