

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.35/Nag./2024**  
(Assessment Year : 2017-18)

Sumit Prakashrao Fulzele  
Majara Rai Warora, Chandrapur 442 907  
PAN – ACLPF1591N

..... Appellant

v/s

Income Tax Officer  
Ward-2, Chandrapur

..... Respondent

Assessee by : Shri Abhay Agrawal  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 11/11/2024

Date of Order – 18/11/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 23/11/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2017-18.

2. Initially, at the time of filing the appeal before the Tribunal, the assessee raised following grounds:-

*1. Whether on the facts and in law, the action of order passed by learned CIT(A) u/s 250 of the Act is bad in law.*

*2. Whether on the facts and in law, the learned CIT(A) erred in upholding the action of learned AO in making addition in respect of cash deposits and other credit entries amounting to Rs.95,94,226 u/s 69A of the Act to income of the assessee, ignoring the facts of the case as well as documentary evidences filed by the assessee.*

*3. Whether on the facts and circumstances the Assessee has justifiable sources to explain the amount deposited and other credit entries in the bank account with supporting evidences, addition made u/s 69A r.w.s 115BBE deserves to be deleted.*

*4. The Assessee craves to add, alter, vary, omit, amend or delete one or more of the above grounds of appeal before, or at the time of, hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law."*

3. During the year under consideration, the assessee was working as Business Correspondent Agent BCA for financial Inclusion Project operated by Vakrangee Limited for providing comprehensive financial services to Bank Of Maharashtra, Temurda, within banked and unbanked areas. To manage the daily transaction bank provided cash credit facilities and under this he can deposits and withdrawn the amount with vouchers of bank, bank has given limit to daily transaction, and against this he received commission of ₹ 42,478. No any personal transaction made during the post demonetization period and pre-demonetization period with this account. As a Business Correspondent Agent his work related to cash deposits and cash withdrawals through his account on behalf of Bank Of Maharashtra Temurda and his commission Income of just ₹ 42,478, hence he did not file d Income Tax return. The Assessing officer had given opportunity to explain this transaction but due to negligence and wrong suggestions of his consultant, the assessee failed to comply with the request of the Assessing Officer. When the assessee received assessment order and demand notice of ₹ 1,20,06,673, he was shocked and immediately approached with Assessing Officer for relief.

4. The Assessing Officer issued notice under section 142(1) of the Income Tax Act, 1961 ("*the Act*") on 13/03/2018 which was served upon the assessee. The Assessing Officer completed the assessment on 23/12/2019,

under section 144 r/w section 142(1) of the Act by assessing the income of the assessee at ₹ 95,94,230 which was taxed under section 115BBE of the Act and while doing so, the Assessing Officer held as under:-

"17. The assessee has made cash deposits amounting to Rs.13,99,500/- other Credit entries appearing in bank account of Rs.81,94,726/- thereby total amounting to Rs.95,94,226/- appearing in the Bank of Maharashtra account of the assessee during the F.Y. 2016-17 relevant to A.Y. 2017-18 remained unexplained. The assessee has not filed ITR, not declared its true income and has not paid taxes due thereon. The assessee has not responded to notices u/s 142(1) and show cause notices issued during E-assessment proceedings. The assessee failed to give any explanation about the nature and source of cash deposits, hence the value of Credit entries, including Cash deposits, appearing in the Bank of Maharashtra account as tabulated in the body of the Order is deemed as unexplained money u/s 69A of the Income Tax Act, 1961 of Rs.95,94,226/- and added to the Total Income of the assessee. The Total Income assessed is taxed u/s 115BBE of the Act at the rate of 60%.

5. Before the learned CIT(A), details of credit entries were culled out in Para-17 of the learned CIT(A)'s order, which is reproduced below:-

"17. The data analysis of bank statement with Bank of Maharashtra reveals various Credit entries, including Cash deposits made during the F.Y. 2016-17, especially during demonetisation period. It is evident from bank credit and debit entries, the assessee received credit entries, made cash deposits, but has not filed Income Tax Return, not offered Income from its activities and not paid taxes due on. The assessee has failed to comply with the terms of notices issued by this Office and never responded to the communication sent to the assessee in terms of E-Proceedings. Considering the above facts and elaborate discussion, it is evident that assessee failed to establish source and nature of credit entries appearing in Bank of Maharashtra account bearing no. 60222793771 including Cash deposits made during the F.Y. 2016-17 relevant to the A.Y. 2017-18. The details of Credit entries appearing in Bank of Maharashtra account of the assessee, which remained unexplained is given hereunder :-

Sr. no.	Period of Deposits	Nature of Deposits	Amount (₹)
1.	Pre-demonetization period (from 01/04/2016 to 08/11/2016)	Cash deposit	50,000
2.	Demonetization period from 09/11/2016 to 30/12/2016		12,17,500
3.	Post demonetization period from		1,32,000

	31/12/2016 to 31/03/2017		
4.	Credit entries from 01/04/2016 to 31/03/2017		81,94,726
		Total:	95,94,226

6. The learned CIT(A) granted part relief by observing as under:-

"31. I have examined the assessment order, written submissions of the appellant and details available on record. The appellant did not file any ITR u/s 139 or 142(1). The case was scrutinized in view of information under 'Operation Clean Money'. There was a cash deposit of Rs.12,17,500/- in Bank of Maharashtra account made during demonetization period. The AO (NFAC) in the remand report has not drawn any adverse inference in general with reference to cash deposits, commission earned and credit entries. However, the AO (NFAC) has not specifically mentioned how cash deposit of Rs.12,17,500/- is justified especially in view of the assessment order wherein the AO has brought out the fact that during pre-demonetization period of 7 months, only Rs.50,000/- was deposited and post-demonetization paid of 3 months, only Rs.1,32,000/- was deposited whereas in less than two months of demonetization period, there was a disproportionate deposit of Rs.12,17,500/-. This is strange as Banking correspondent will not suddenly receive such amount in cash when credit entries were also there throughout the year. Further, the AO has analyzed with F.Y. 2015-16, wherein during entire financial year, only Rs.92,500/- was deposited in cash. In fact, the appellant ignored law by deliberately avoiding statutory proceedings by not complying with notices as under:-

Sr. no.	Nature of Notice	Date of Issue of Notice	Compliance Date	Mode of Service	Remarks
1.	Notice u/s 142(1)	13/03/2018	31/03/2018	By Post	Not complied
2.	Show Cause Notice	27/06/2019	27/06/2019	By Post	Not complied
3.	Show Cause Notice	18/10/2019	18/10/2016	By Post	Not complied
4.	Show Cause Notice	13/12/2019	19/12/2016	By Post	Not complied

33. In this regard, reliance is placed on rationale held in the cases of:-

1. *Leela Devi vs. ITO (ITAT-Delhi)(2021)* Assessee failed to satisfactorily explain source of cash deposits during demonetization period, addition was to be confirmed.

2. *Smt. S. Sakunthala Sivam (Madras High Court) (2022)* - Source of cash deposits could not be satisfactorily explained by the assessee, hence the appeal was dismissed.

3. *Karan Bhalla vs. ITO (ITAT-Delhi) ITA No. 4862/Del/2014 dated 9/16/2017* - i) Addition for cash deposit in Bank justified if assessee fails to explain the source of deposit; ii) Assessee concocted the story just to explain the source of cash deposited by him in the bank account hence, benefit of opening cash balance cannot be

given; iii) Regarding cash deposit out of cash withdrawals from the same account- no urgency in making further withdrawals if having sufficient cash balance with him.

4. *Manoj Aggarwal vs. DCIT 113 ITD 377 (ITAT-Delhi) (2008)* - where assessee not maintaining books of account, though Section 68 will not be applicable, yet cash deposit in bank should be explained by assessee u/s 69/69B - unless any clinching evidence, shows nature and source of money deposited in the bank account, same should be added as his unexplained income - yes

5. *Praveen Garg vs. ITO 132 taxmann.com 142 (Delhi-ITAT) (2021)* - Appellant failed to explain the source of cash deposits - CIT(A) justified in upholding entire cash deposits as unexplained u/s 69A.

6. *K.V. Mathew vs. ITO 42 taxmann.com 571 (Kerala High Court) (2014)* Where the amount in SB account remained unexplained, addition u/s 69A was justified.

7. *CIT vs. Sarwan Kumar Sharma 49 taxmann.com 101 (Gujarat)* Addition u/s 69A was confirmed in the absence of documentary proof that deposits is from business/ trading in clothes.

8. *Sanjay Kapur Vs ACIT [2022] 138 taxmann.com 207 (SC)* wherein it was held that High Court upheld reassessment in case where assessee had made a deposit of cash in bank during demonetization period, which was reflected in his return of income, but no supporting evidences were available to prove source of such deposit leading to 'reason to believe that income otherwise chargeable to tax had escaped assessment'; SLP filed against High Court's judgment dismissed as withdrawn.

9. *Ravinder Kumar Vs ITO [2020] 118 taxmann.com 166 (Delhi)/[2020] 273 Taxman 369 (Delhi)* wherein it was held that where assessee had failed to produce any material to authenticate his contention that cash deposits in his account were on account of sales being made by him from Kirana business, tax authorities were justified in making addition of unexplained cash entries in bank account in hands of assessee.

10. *Rajiv Jain Vs ITO [2019] 101 taxmann.com 92 (Delhi)/[2019] 410 ITR 179 (Delhi)* wherein it was held that where assessee challenged addition made to its income under section 68 in respect of amount deposited in bank contending that said amount came from sale of wearing apparel and traditional silver utensils, since there was no evidence and material to establish sale or inheritance, etc., impugned addition made by authorities below was to be confirmed.

11. *Roshan Di Hatti v. CIT [1992] 2 SCC 378 (SC)* wherein it was held that the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

12. *Rakesh Kumar Gupta vs. CIT 115 taxmann.com 38 (Allahabad) (2020)* cash deposit claimed it from agricultural income prove cultivation of agricultural produce by Khasra to source of irrigation cold storage evidence - Addition u/s 68 as undisclosed income - upheld.

34. Thus, it is clear that except for giving copy of order of BCA w.e.f. 24.07.2015 and Bank of Maharashtra letter dated 09.01.2020 relating to appellant's appointment as BCA with daily transaction limit of Rs.25,000/- , the appellant has not been able to demonstrate how he claims entire cash deposits to be from some business in the absence of narrated bank statement, cash book, daily register, name and addresses of parties and non-compliance of various notices by the AO.

35. However, in view of fact that there was receipt of Rs.1,82,060/- during pre and post demonetization period which spans 10 months period, a deposit of Rs.1,17,500/- is held to be reasonable quantum of receipts, in the interest of natural justice, to cover up for any excess receipts from customers made during this demonetization period which is of less than 2 months, and balance addition of Rs. 11,00,000/- u/s 69A w.r.t. section 115BBE, is sustained. Hence, the Ground of appeal No.1 raised by the appellant is dismissed."

7. The learned Counsel for the assessee, vide his letter dated 26/08/2024, furnished following modified grounds of appeal along with additional evidences with a request to consider the same which are also listed below:-

Modified Grounds of Appeal:-

"1. Whether on the facts and in law, the action of order passed by learned CIT(A) u/s 250 of the Act is bad in law.

2. Whether on the facts and in law, the learned CIT(A) erred in sustaining the addition made by learned AO in respect of cash deposits in bank account during demonetisation period at Rs.11,00,000 u/s 69A r.w.s 115BBE of the Act, ignoring the facts of the case as well as documentary evidences filed by the assessee.

3. Whether on the facts and circumstances the Assessee has justifiable sources to explain the amount deposited and other credit entries in the bank account with supporting evidences, the addition made u/s 69A r.w.s 115BBE deserves to be deleted.

4. The Assessee craves to add, alter, vary, omit, amend or delete one or more of the above grounds of appeal before, or at the time of, hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law."

Additional Evidences:-

a) Copy of clarification letter issued by Bank of Maharashtra informing that the cash deposits made in assessee's bank account (A/c no.60222793771) during demonetization period were received from the

*customers of the Bank on behalf of bank (Refer Pages-1-1 enclosed herewith); and*

*b) Copy of bank statement (A/c no. 60222793771) for the period 01/11/2016 to 31/12/2016 (Refer Pages-2 - 10 enclosed herewith).*

8. The aforesaid modified grounds of appeal and additional evidences furnished by the learned Counsel for the assessee are hereby admitted. The learned Counsel for the assessee reiterated the submissions made before the authorities below and in support of his contentions, he drew our attention to the decision of the Co-ordinate Bench of the Tribunal, Kolkata Bench, in Shri Prasenjit Das v/s ITO, ITA no.369/Kol./2022, for the assessment year 2017-18, order dated 28/11/2022, the operating portion of which is reproduced below:-

*"After hearing the rival contentions and perusing the material on record, the undisputed facts as culling out of records before us and as gathered from the arguments of the rival parties, we observe that the assessee is customer service point and bank correspondent of Allahabad Bank at Kolaghat Branch and was also carrying on a family business of dry food processing. Since the banking facilities were not available in the rural areas and therefore he acted as agent of the bank accepting money from the public and also disbursing money to the public on behalf of the bank. We note that the modus operandi was that whenever the money was collected it was immediately deposited into his bank account by the assessee and thereafter remitted by RTGS in the Allahabad bank. Similarly whenever cash is required by the customer the same is remitted from the bank and transferred to assessee's account and disbursed accordingly. The assessee was paid commission in lieu of this service.....*

*We have also gone through the Business Correspondence Agent/ Village Level Entrepreneur Agreement entered between dated 20.06.2016 wherein the assessee was authorized as BCA/VLE (business correspondent agent/village level entrepreneur) and commission received by the assessee from the Allahabad Bank for rendering the said services. After examining the above agreement and annexure attached therewith, we note that A-1 provides for the eligibility of the BCA/VLE, A-2 deals with the scope of services to be rendered which included enrollment of customers including collection of biometric and other details and providing cards such as debit card/credit card and deposit of money in a bank account with any bank, withdrawal of money from account with any bank, remittances from the account with a bank to an account with the same bank or any other bank, balance enquiry and*

*issue receipts/statement of accounts, canvassing of loan applications from eligible beneficiaries. Besides we note that the assessee is also required to create awareness about savings and other products offered by the bank and other services to be offered at the CSP namely basic saving bank deposit accounts, recurring deposit accounts remittances, fixed deposits, overdraft and retail loans, KCC and third party financial products etc. We note that in similar manner annexure III provides for technology services and annexure-IV lays down standard operating procedures for business. We have also examined the bank account of the assessee to know the behavior and pattern of cash deposits into his bank account and find that there were deposits right from the beginning ranging normally from Rs. 3,000 to Rs. 20,000/- and on some occasions even more amount of cash was deposited out the money received from the customers and used to be remitted to Allahabad Bank account from his account immediately. Therefore, we are of the considered view that the authorities below have failed to appreciate the facts correctly which were available on records. Considering this fact, we are not in agreement on the conclusion drawn by the lower authorities and accordingly set aside the order of Ld. CIT(A) by allowing the appeal of the assessee and the AO is directed to delete the addition."*

9. The learned Departmental Representative could hardly controvert the position that the assessee is only acting as a conduit and the nature and source of cash deposited in the bank is adequately explained and hence we find no merit in making addition under section 69A of the Act by the Assessing Officer and confirmed by the learned CIT(A). Further, it is incomprehensible as to how a mathematical estimation can be extrapolated to confirm the part addition of ₹ 11 lakh. Such exercise by the learned CIT(A) is baseless, arbitrary and ergo jettisoned. Accordingly, all the grounds raised by the assessee are allowed.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 18/11/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 18/11/2024**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur