

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2708/दिल्ली/2024 (नि.व. 2017-18)

ITA No.2708/DEL/2024 (A.Y.2017-18)

Shobhit Anand,
M-37, 2nd floor, Rajouri Garden,
Delhi 110027

PAN: BOLPA-8576-H

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-45(2),
E-2, Civic Centre, Minto Road, New Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Anil Chopra, Chartered Accountant
प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal , Sr. DR
सुनवाई की तिथि/ Date of hearing : 12/09/2024
घोषणा की तिथि/ Date of pronouncement: : 29/11/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 26.02.2024, for assessment year 2017-18.

2. This appeal is time barred by 31 days. The assessee has filed a petition seeking condonation of delay. I find that delay in filing of appeal is not intentional but is for the reasons stated in the said application. The reason given by the assessee in application appears bonafide. Thus, delay of 31 days in filing of appeal is condoned and appeal is admitted for hearing on merits.

3. The solitary issue assailing the order of CIT(A) in grounds of appeal is sustaining addition of Rs.26,50,000/- u/s. 69A of the Income Tax Act, 1961(hereinafter referred to as 'the Act') on account of cash deposits during demonetization period.

4. Shri Anil Chopra, appearing behalf of the assessee submits that the assessee is engaged in the business of making and trading of gold jewellery. The assessee started its business in the period relevant to AY 2016-17 in the name of "Ambika Jewellers". The assessee filed its return of income u/s. 44AD of the Act. Hence, the assessee is not required to maintain books of account The sales and purchase declared by the assessee have been accepted by the Department. The cash deposits aggregating to Rs.14,50,000/- are from sale proceeds of the relevant period. The remaining amount of Rs.12,00,000/- which has been added by the Assessing Officer (AO) are deposited in the current bank account of the assessee's proprietorship firm Ambika Jewellers maintained with Kotak Mahindra Bank. The source of said amount is maturity amount of two fixed deposits (FD) of Rs.6,00,000/- and Rs.13,44,616/- maintained with the Oriental Bank of Commerce. After the encashment of said FD's, the assessee started its business. The unutilized amount of Rs.12,00,000/- was available with the assessee which was subsequently deposited in the current account. The assessee furnished copy of bank statements, detail of creditors, extracts of bank statement showing maturity of fixed deposits, etc. The AO rejected contentions of the assessee. The Assessing Officer failed to take note of assessee's turnover reflected in VAT returns in the relevant period which duly supports the contention of the assessee. To buttress his arguments Id. Counsel for the assessee placed reliance on the

decision, Pradeep Jain vs. ITO in ITA No. 8001/Del/2018 for AY 2015-16 decided on 04.06.2019.

5. Per contra, Ms. Shivani Bansal representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

6. Both sides heard and order of the authorities below examined. The assessee in appeal is against an ex-parte order passed by the CIT(A).

7. The solitary issue in appeal is against addition of Rs.26,50,000/- u/s. 69A of the Act on account of cash deposits during demonetization period. The assessee allegedly deposited Rs.14,50,000/- in IndusInd Bank and Rs.12,00,000/- in Oriental Bank of Commerce. The contention of the assessee is that Rs.14,50,000/- was deposited in Indusind Bank from business proceeds/sales during the relevant period. In support of his contention, the assessee has placed on record VAT returns. With regard to deposit of Rs.12,00,000/- in Kotak Mahindra Bank in three trenches of Rs.4,00,000/- each, the contention of the assessee is that the aforesaid amount is surplus from the cash withdrawals on maturity of FD's maintained with Oriental Bank of Commerce. It is further contended that since the assessee has filed return of income u/s. 44AD of the Act, the assessee was not required to maintain books of account. Therefore the same could not be produced before the authorities below.

8. In so far as assessee contention of cash deposits of Rs.14,50,000/- in IndusInd Bank is concerned, a close examination of bank statement of IndusInd Bank available at page 20 to 24 of the paper book reveals that the assessee has deposited Rs.4,50,000/- on 15.11.2016, Rs.4,00,000/- on 16.11.2016 and same amount of cash has been deposited on 17.11.2016. Apart from the aforesaid

amounts aggregating to Rs.12,50,000/- no other amount has been deposited in cash in IndusInd Bank during the period relevant to assessment year under appeal. The assessee has also placed on record VAT returns for the Financial Year 2016-17 at pages 31 to 34 of the paper book to prove business receipts. The turnover declared by the assessee in VAT returns during four quarters of Financial Year 2016-17 is as under:-

Period	Turnover
First Quarter From 01.04.2016 to 30.06.2016	1,87,822/-
Second Quarter From 01.07.2016 to 30.09.2016	1,72,481/-
Third Quarter From 01.10.2016 to 31.12.2016	18,89,272/-
Fourth Quarter From 01.01.2017 to 31.03.2017	11,70,558/-

9. A bare perusal of VAT returns show that during the third and fourth quarter there was rise in turnover of the assessee, hence, a fair presumption can be drawn that the cash deposited in IndusInd Bank during the corresponding period was from business receipts. Thus, the assessee's explanations to that extent is accepted, hence *pro tanto* addition of Rs.12,50,000/- is deleted.

10. The second contention of the assessee is that amount of Rs.12,00,000/- deposited in Kotak Mahindra Bank is from cash available with the assessee from maturity amount of fixed deposits. To substantiate this contention the assessee has drawn our attention to bank statement of Oriental Bank of Commerce at page

29 and 30 of the paper book. A close examination of bank statement reveals that on 23.04.2014 an amount of Rs.13,44,616/- and another some of Rs.6,00,000/- was credited to the bank account of the assessee. The, aforesaid amount credited to the bank account is stated to be maturity amount of fixed deposits. Form the aforesaid amounts Rs.13,00,000/- were withdrawn in cash in the following months between 30.04.2014 to 27.06.2014. The contention of the assessee that after investment in business the surplus cash left Rs.12,00,000/- was deposited in Kotak Mahindra Bank in November 2016. The said contention of the assessee is farfetched and afterthought. It is even difficult to presume that the assessee who is engaged in business of jewellery would be keeping this amount idle and would deposits the same in bank after more than two years. Therefore, the second contention of the assessee is rejected.

11. In light of above findings, the addition u/s. 69A of the Act is restricted to Rs.14,00,000/-.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Friday the 29th day of November, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 29/11/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI