

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 1874/Kol/2024

Assessment Year: 2017-18

Sri Jagdish Prasad Choudhury 159, Rabindra Sarani, Burrabazar, Kolkata-700007. (PAN: ABYPC4303M)	Vs.	ITO, Ward-36(7), Kolkata.
Appellant		Respondent

Date of conclusion of Hearing	21.11.2024
Date of Pronouncement	05.12.2024
For the Appellant	Shri Abhisek Bansal, Advocate,
For the Respondent	ShriRuchika Sharma, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

This appeal filed by the assessee is against the order of Ld. CIT(A), NFAC, Delhi dated 23.06.2023 for AY 2017-18 arising out of assessment order passed u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by ITO, Ward-36(7), Kolkata dated 30.12.2019.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) against the ex parte order passed by the Ld. CIT(A) upholding the order of AO wherein various additions were made in respect of (i) deposit of cash during demonetization period of Rs.23,17,200/-, (ii) estimated addition @ 8% of Rs.48,13,522/- u/s. 44AD , (iii) addition of Rs.47,96,863/- on peak credit basis and (iv) making addition of Rs.94,009/- on the basis of Form 26AS.

3. Facts in brief are that the assessee has deposited cash in his bank account during demonetization period and accordingly, a notice u/s. 142(1) of the Act was issued on 13.03.2018 wherein the assessee was called upon to furnish his return of income on or before 31.03.2018. The assessee, however, failed to furnish the said return of income in response to notice u/s. 142(1). Accordingly, proceedings u/s. 144 of the Act were initiated.

The AO issued letters u/s. 133(6) to various banks seeking information for doing independent verification. The assessee also made part compliance to the information/explanation sought by the AO. On the basis of the information of the assessee, AO found that there was total cash deposit of Rs.23,17,200/- by the assessee during demonetization period in his bank accounts maintained with various banks in the previous financial year. The details of the said transactions were given by the AO on page 2 and 3 in his assessment order. When the assessee could not explain the source of cash deposits a show cause notice dated 22.12.2019 was issued to the assessee. Finally, the AO made the following additions to the income of the assessee namely, (i) cash deposit during demonetization period Rs.23,17,200/-, (ii) Rs.48,13,522/- by applying @ 8% on Rs.6,01,69,030/- the total credits in the five bank accounts by invoking provisions of section 44AD of the Act (iii) Rs.47,96,863/- on peak balance in the bank accounts during the financial year and (iv) also Rs.94,009/- appearing in form 26AS.

4. The Ld. CIT(A) passed the ex parte order when the assessee failed to appear on the various dates of hearing fixed by the appellate authority.

5. After hearing the rival contentions and perusing the material on record, we find that though the assessee is non-cooperative before the AO as well as before the Ld. CIT(A) and even the decision of the Ld. CIT(A) was ex parte, we observe from the assessment order that some same addition has been made multiple times leading to assessing the same income more than two times. We note that the assessee has deposited cash during demonetization period which was not explained during the assessment proceedings and added the same to the income of the assessee. Then the income was estimated @ 8% on the total credits in the bank account of the assessee amounting to Rs.6,01,69,030/- which is over and above the cash deposits during demonetization period by following the provisions of sec.44AD of the Act @ 8% but again the AO computed the peak credit in the various bank accounts of the assessee and added a sum of Rs.47,96,863/- to the income of the assessee. We also note that the addition of Rs.94,009/- was also made on the basis of Form 26AS. In our opinion, the addition of 8% on the total credits in the bank account by invoking sec. 44AD and

addition on the basis of peak credit are two additions in respect of the same income which is incorrect and cannot be sustained. We note that the in the subsequent two assessment years 2018-19 and /AY 2019-20 the N.P rate are 3.03% and 4.55% respectively. Therefore the estimation of income at 8% is arbitrary and without any basis. Similarly once the estimation of income is based upon the percentage application on total credits in the bank accounts, then no other addition shall be required to be made. With these observations , we deem it appropriate and proper to restore the issue to the file of the AO to decide the issue de novo after taking into consideration the following factors i.e. the books of account of the assessee and other evidences which the assessee may furnish before the AO. Needless to say that assessee should be provided reasonable opportunity of being heard before framing the assessment afresh in accordance with law.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 5th December, 2024

Sd/-
 (Pradip Kumar Choubey)
 Judicial Member

Sd/-
 (Rajesh Kumar)
 Accountant Member

Dated: 5th December, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–Shri Jagdish Prasad Choudhury.
2. Respondent – ITO, Ward-36(7), Kolkata.
3. CIT(A), NFAC, Delhi
4. Pr. CIT
5. DR, ITAT, Kolkata,
 True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Bench, Kolkata