

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.510/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Garuda Vahan Private Ltd., Cantonment Road, Cuttack	Vs	DCIT, ASMNT, Circle-2(1), Cuttack
PAN No. : AACCG 7369 R		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri Mohit Sheth, Advocate
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	12/12/2024
घोषणा की तारीख / Date of Pronouncement	:	12/12/2024

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 10.10.2024, passed in appeal No.CIT(A), Cuttack/10233/2019-20 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1069585705(1) for the assessment year 2017-2018, on the following grounds of appeal :-

- Return was filed by the appellant on 29.03.2019 and was duly accepted by CPC. The AO treated as non est which is unlawful and arbitrary. Return income of the appellant was not accepted by the AO the same seems to be unlawful and unjustified.*
- For that the addition of Rs.22,00,000/- u/s.69A of the I.T. Act. is unlawful and unjustified and as such also arbitrary. The appellant has duly furnished the books of accounts and has disclosed the income duly explained to the AO but the AO did not take into consideration. The AO should have accepted the explanation and should have also verified the records of the appellant. The AO without verifying the details properly had just passed the assessment order. The amount of Rs.22,00,000/- deposited during the demonization period is part of books of accounts which had been duly explained before the AO. Without considering the fact the AO on the basis of surmises and assumption had added the deposits u/s.69A to which the CIT(A) sustained the addition. The*

addition of Rs.22,00,000/- u/s.69A is arbitrary, unlawful and unjustified as it was fully explained.

3. *For that under the facts and in the circumstances of the case the whole addition as made by the AO is arbitrary, uncalled for and unjustified and such addition should be deleted in the interest of justice. The AO should have accepted the explanation and also should have accepted the return of income filed by the appellant.*
4. *For that under the facts and in the circumstances of the case the Order u/s.250 of the I.T. Act. as made by the Commissioner of Income Tax (Appeals), NFAC, Delhi is arbitrary, unreasonable, unlawful, uncalled for and unjustified as the CIT(A) without applying his mind and without going through the fact had passed the order abruptly by sustaining the addition of Rs.22,00,000/- u/s.69A and dismissing this issue raised in the appeal.*
5. *For that under the facts and in the circumstances of the case the return of income filled by the appellant should have been accepted.*
6. *For that under the facts and circumstances of the case, the assessment as made and completed u/s. 144 of the I.T. Act. is arbitrary, unlawful and unjustified. As the appellant has furnished all the details with documentary evidences with all the books of accounts in response to the notices and those were duly verified and carefully examining by the AO during the course of assessment proceedings. Audited profit and loss account with Balance sheet were duly verified by the AO and all the income earned by the appellant was shown in the Profit & Loss account and the same was verified by AO. As such it cannot be said that no explanation was furnished by the Appellant.*

2. Brief facts of the case are that the assessee is a private limited company and since no business was carried out during the previous year, the return of income was not filed. The AO had information in his possession that the assessee has deposited Rs.22 lakhs during demonetization period in SBN, therefore, he started the scrutiny assessment. Since the assessee has not filed its return of income, notice u/s.142(1) of the Act was issued in response to which the assessee finally filed its return of income only on 29.03.2019 which was not accepted by

the AO and treated as nonest being filed after the time provided in the notice u/s.142(1) of the Act. The AO then proceeded to complete the proceedings and after considering the details filed by the assessee, had made the addition of Rs.22 lakhs u/s.69A of the Act by holding the cash deposited during the demonetization period as undisclosed and unexplained money. The assessee preferred an appeal before the Id. CIT(A), who dismissed the same, therefore, the present appeal is filed before us.

3. Since all the grounds of appeal are in relation to the single issue of addition of Rs.22 lakhs made u/s.69A of the Act, therefore, all the grounds are taken together for sake of convenience. During the course of hearing, Id. AR of the assessee submitted that the assessee is having cash balance available with it as on the opening date of the previous year i.e. on 01.04.2016 at Rs.24,55,881/-, which is duly disclosed in the Balance Sheet as at 31.03.2016. Out of the said cash balance available, Rs.22 lakhs was deposited in SBN during the demonetization period and in support of the same, copy of the cash book for the year under appeal and of immediately preceding year were submitted before us in the paper book at pages 42 to 45. The Id. AR also filed copies of the balance sheets for the previous year as well as immediately preceding previous year where in the cash balance as appearing in the cash books for with the years are duly find placed. The Id. AR submitted that since sufficient cash balance was available with the assessee as on 09.11.2016 i.e. the date when the demonetization was announced and out of such cash balance,

the cash available in the SBN was deposited during demonetization period, therefore, it cannot be held that the said cash is unexplained and undisclosed money of the assessee and thus the provision of section 69A of the Act cannot be invoked, He accordingly, prayed for deletion of the addition made of Rs.22 lakhs u/s.69A of the Act. Ld. AR further submitted his written submission which reads as under:-

As Per AO- No return was filed for the Asst. Year-2017-18.

In response to notice u/s. 142(1) return was filed on 29.03.2019. Return was not filed within the time limit hence treated as non est.

In response to notice to the above, the assessee furnished the required details except tax audit reports, documentary evidences in support of generation of cash amounting to Rs.22,00,000/- which was deposited in the bank accounts along with deposit slips evidencing Specified Bank Notes deposited during the demonetization period i.e. from 09.11.2016 to 30.12.2016. (Para-4 of Page-2 of Assessment Order)

Due to non filling of returns the veracity of assessee's claim that actual cash in hand balance as on 01.04.2016 was Rs.24,55,881/- was considered highly questionable.

No cash deposits during the period from 09.11.2015 to 30.12.2015 i.e. the period corresponding to the demonetization period of the relevant financial year. It was also seen that there was no transactions in the bank during the financial year 2015-16 and till cash was deposited in the account during the demonetization period.

Huge cash balance of Rs.24,55,881/- as on 01.04.2016 was artificially created in the cash book.

It is no believable by any stretch of imagination that the business which had already been discontinued would have huge cash balance as on 01.04.2016.

Source of cash deposits was found to be unexplained. Hence treated as unexplained money u/s.69A.

As per CIT(A)-

Notice was issued by the CIT(A) dt.27.01.2021.

On the basis of grounds of appeal and the statement of facts, the appeal of the Appellants is liable to be dismissed.

Appellant Contentions -

The assessee is a company. The return of the income filed on 29.03.2019. There is no business during the aforesaid asst. year. Certain interest income was earned by the appellant. The appellant deposited cash out of the balance available as on 31.03.2016 i.e. on 01.04.2016. Copy of the Balance Sheet of both the years was duly filed before the AO for his verification. But the AO denied that no audit report was furnished. The AO in his order had cleared stated that the opening cash in hand as on 01.04.2016 is artificially created. When all the details as asked by the AO in his notice was duly produced and verified by the AO how could one can say that proper evidences not furnished and cash book is artificially created. Deposits in cash during the demonization period was duly explained. The AO stated that the appellant has failed to offer any explanation regarding the cash deposits hence should be considered as unexplained. How could cash balance as on 01.04.2016 i.e. opening balance can be manipulated. The opening cash balance as on 01.04.2016 is brought forward amount of closing balance as on 31.03.2016. The same can be verified from both the audit report. The audit report of both the years was duly filed before ROC also. As such it cannot be said that the books of accounts are manipulated and also deposits in the bank cannot be said as unexplainable. It was also stated that cash deposits during the period 10.11.2016 and 14.11.2016 was made but no deposits was made in the corresponding period during the F. Year 2015-16. This logic is not valid for the addition of cash deposits.

Cash books was furnished before the AO for verification.

CIT(A) dismissed the appeal without proper verification.

No notices was served by the CIT(A). One notice dt.27.01.2021 was issued. Further no notices was issued. On the basis of statement of facts and ground of appeal the CIT(A) without looking into the matter and with the closet mind had dismissed the appeal which is arbitrary, unlawful, unjustified and against the principal of natural justice.

The whole assessment as made by the AO and confirmed by the CIT(A) is arbitrary, unlawful and unjustified. The assessment made is against the principal of natural justice and the same should be deleted in the interest of justice.

Prayer:

The appellant request your honour to kindly consider the fact. The appellant shall ever pray.

4. On the other hand, Id. Sr. DR vehemently supported the orders of the lower authorities and submitted that the return of income filed by the assessee was not accepted by the AO and the assessee has failed to furnish the necessary evidence to support the claim that sufficient cash was available with it. Merely filing the copy of the cash book does not dissolve the burden casted upon the assessee to establish the availability of the cash in hand with it, which was deposited during the demonetization period in the bank. He, therefore, prayed for the confirmation of the additions made and confirmed by the lower authorities.

5. We have heard rival submissions and perused the material available on record. In the instant case, it is not in dispute that the assessee is not having any business activity during the previous year. From the perusal of the copy of the profit and loss account, there is no revenue from sales and only petty income in the shape of interest etc. is received which was not sufficient to cover up the day-to-day business expenditure such as salary, finance, cost etc. The return of income was filed belatedly by the assessee which has not been accepted by the AO, however, the fact remained that the assessee being a private limited company and the financial statements were duly submitted before the Registrar of Companies, According to such financial statements the assessee is having cash balance of Rs.7,15,614/- as at 31.03.2017 and Rs.24,55,881/- as at 31.03.2016. The corresponding cash balance as on 01.04.2015 was of Rs.6,37,424/-. The amount of cash in hand available with assessee is accumulation of liquidation from the debtors in cash as

well as bank withdrawal which has duly been recorded in the cash book for the period from 01.04.2015 to 31.03.2017 i.e. for two financial years. It is also seen that as on the first day of the previous year i.e. on 01.04.2016 as per the cash book the opening balance was of Rs.24,55,881/- and after meeting out the day-to-day expenses and adding-up the bank withdrawals, the total cash available as on the mid night of 08.11.2016 i.e. the date when the demonetization was announced by the Hon'ble Prime Minister, the assessee was having cash balance of Rs.24,55,881/- out of which it has been claimed that Rs.22 lakhs was deposited in SBN during the demonetization. This fact remained uncontroverted by the AO. The cash book is reproduced as under :-

GARUDA VAHAN PVT LTD CANTONMENT ROAD CUTTACK							44
Cash Book							
1-Apr-16 to 31-Mar-17							
Date	Particulars	Vch Type	Vch No.	Debit	Credit	Page 1 Balance	
1-Apr-16	To Opening Balance		1	24,55,881.44			
16-Apr-16	To AXIS BANK	Contra		60,000.00	25,05,881.44	Dr	
	By Closing Balance			25,05,881.44	25,05,881.44		
1-May-16	To Opening Balance		3	25,05,881.44			
2-May-16	By Salary Exp	Journal		10,000.00	24,95,881.44	Dr	
	By Closing Balance			25,05,881.44	25,05,881.44		
1-Jun-16	To Opening Balance		2	24,95,881.44			
4-Jun-16	By AXIS BANK	Contra	7	1,000.00	24,94,881.44	Dr	
5-Jun-16	By Salary Exp	Journal		10,000.00	24,84,881.44	Dr	
	By Closing Balance			24,95,881.44	24,95,881.44		
1-Jul-16	To Opening Balance		3	24,84,881.44			
8-Jul-16	To AXIS BANK	Contra		9,000.00	24,93,881.44	Dr	
	By Closing Balance			24,93,881.44	24,93,881.44		
1-Aug-16	To Opening Balance		4	24,93,881.44			
20-Aug-16	To AXIS BANK	Contra		30,000.00	25,23,881.44	Dr	
	By Closing Balance			25,23,881.44	25,23,881.44		
1-Sep-16	To Opening Balance		5	25,23,881.44			
19-Sep-16	To AXIS BANK	Contra		75,000.00	25,98,881.44	Dr	
	By Closing Balance			25,98,881.44	25,98,881.44		
1-Nov-16	To Opening Balance		22	25,98,881.44			
5-Nov-16	By Salary Exp saurav	Journal		10,000.00	25,88,881.44	Dr	
24-Nov-16	By AXIS BANK	Contra	6	20,000.00	25,68,881.44	Dr	
30-Nov-16	By SBI-C/A-30162790238	Contra	7	5,00,000.00	20,68,881.44	Dr	
	By Closing Balance			25,98,881.44	25,98,881.44		

continued ...

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GARUDA VAHAN PVT LTD
Cash Book : 1-Apr-16 to 31-Mar-17

Date	Particulars	Vch Type	Vch No.	Debit	Credit	Page 2 Balance
1-Dec-16	To Opening Balance			20,68,881.44		
1-Dec-16	By SBI-C/A-30162790238	Contra	8		5,00,000.00	15,68,881.44 Dr
2-Dec-16	By Salary Exp sunil	Journal	26		10,000.00	15,58,881.44 Dr
7-Dec-16	By SBI-C/A-30162790238	Contra	9		5,00,000.00	10,58,881.44 Dr
17-Dec-16	By AXIS BANK	Contra	10		3,75,000.00	6,83,881.44 Dr
	To AXIS BANK	Contra	11	7,800.00		6,91,681.44 Dr
20-Dec-16	By AXIS BANK	Contra	12		1,00,000.00	5,91,681.44 Dr
21-Dec-16	By AXIS BANK	Contra	13		80,000.00	5,11,681.44 Dr
31-Dec-16	By SBI-C/A-30162790238	Contra	14		5,00,000.00	11,681.44 Dr
				20,76,681.44	20,65,000.00	
	By Closing Balance					11,681.44
				20,76,681.44	20,76,681.44	
1-Feb-17	To Opening Balance			11,681.44		
1-Feb-17	By Salary Exp sourav	Journal	28		10,000.00	1,681.44 Dr
9-Feb-17	To IDBI BANK	Contra	15	2,30,000.00		2,31,681.44 Dr
				2,41,681.44	10,000.00	
	By Closing Balance					2,31,681.44
				2,41,681.44	2,41,681.44	
1-Mar-17	To Opening Balance			2,31,681.44		
5-Mar-17	By Salary Exp sunil	Journal	31		10,000.00	2,21,681.44 Dr
6-Mar-17	By Salary Exp sourav	Journal	32		10,000.00	2,11,681.44 Dr
8-Mar-17	By Salary Exp sunil	Journal	33		10,000.00	2,01,681.44 Dr
10-Mar-17	By Salary Exp sourav	Journal	34		10,000.00	1,91,681.44 Dr
14-Mar-17	To AXIS BANK	Contra	16	5,00,000.00		6,91,681.44 Dr
15-Mar-17	By Salary Exp sunil	Journal	35		10,000.00	6,81,681.44 Dr
18-Mar-17	To AXIS BANK	Contra	17	55,000.00		7,36,681.44 Dr
	By LEGAL EXP Being court fees and stamp purchase	Payment	148		1,067.00	7,35,614.44 Dr
	By Salary Exp sourav	Journal	36		10,000.00	7,25,614.44 Dr
31-Mar-17	By Salary Exp sunil	Journal	41		10,000.00	7,15,614.44 Dr
				7,86,681.44	71,067.00	
	By Closing Balance					7,15,614.44
				7,86,681.44	7,86,681.44	

6. Since the assessee is having sufficient cash balance out of which the amount of Rs.22 lakhs was deposited in the bank during the demonetization in SBN, therefore, we find no occasion to hold such cash

deposited as unexplained and, therefore, the addition made by the AO on this account is hereby deleted.

7. It is also worthwhile to mention here that the AO has not doubted the books of accounts and other documents filed by the assessee nor the provisions of Section 145(3) of the Act were invoked before making the addition of cash deposited in SBN during the demonetization claimed by the assessee as out of the cash available, in the bank account maintained by it on day-to-day basis. Therefore, the provision section 69A cannot be invoked. Thus, all the grounds of appeal of the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12/12/2024.

Sd/-
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 12/12/2024
Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Garuda Vahan Private Ltd.,
Cantonment Road, Cuttack
2. प्रत्यर्थी / The Respondent-
DCIT, ASMNT, Circle-2(1), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रतिलिपि //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack