

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH MUMBAI**

BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 4992/Mum/2024
(Assessment Year: 2017-18)**

Kunhi Mohammed Beerun Kutty Haji Machigal Mannan Chry 208, Aga Khan Bldg, S.V.P Road, Dongri, Mumbai – 400009.	Vs.	ITO, Ward – 25(1)(1) Kautilya Bhavan, BKC Mumbai – 400020.
PAN/GIR No. AFOPM1379P		
(Applicant)		(Respondent)

Assessee by	Shri Tarang Mehta
Revenue by	Shri Vithal Machindra Bhosale, Sr. DR

Date of Hearing	16.12.2024
Date of Pronouncement	19.12.2024

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 31.07.2024, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi / ('Ld. CIT(A)'), for the assessment year 2017-18. The assessee has raised the following grounds of appeal:

- 1. The Ld. CIT(A) has erred in law and on facts in passing the appellate order, which is invalid and bad in law.*

2. *The Ld. CIT(A) has erred in law and on facts in upholding the order passed u/s 143(3) of the Act which is illegal and bad in law.*
3. *On the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the addition of Rs. 31,11,500/- u/s 69A of the Act on account of unexplained cash deposit in bank account.*

2. At the very outset, the Ld. AR drawn my attention towards ground No.3, wherein assessee has challenged the additions of Rs. 31,11,500/- u/s 69A of the Act.

3. In this regard Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the revenue authorities and also relied upon his written submissions filed before the CIT(A).

4. On the contrary, the Ld. DR relied upon the orders passed by the revenue authorities.

5. After having heard counsels of both the parties and after gone through the documents placed on record and also the orders passed by the revenue authorities, I noticed that assessee had deposited cash during the demonetization period and submitted documents in support of his claim, however the Ld. CIT(A) was of the view that the source of cash deposit to the tune of Rs. 31,11,500/- during the demonetization period remained unexplained.

6. In this regard, Ld. AR while drawn my attention to the written submissions submitting that assessee is in the

business of buying and selling coconut water and is a Member of Mumbai Agriculture Produce Marketing Committee. For the year under consideration the assessee has filed the return of income on 06.11.2017 under the presumptive taxation scheme as per the provisions of Sec. 44AD of the Act and declared income of Rs. 3,55,910/- being 8% of the total turnover. It was submitted that the revenue authorities while deciding this ground has ignored very vital facts of the case and misdirected in making additions. My attention was also drawn to the balance sheet filed as on 31.03.2016, wherein the opening cash balance of Rs. 17,79,286/- is duly reflected and the said factual position is also as per the return of income filed by the assessee for A.Y: 2016-17. Although during the year under consideration the assessee has opted for presumptive taxation u/s 44AD of the Act but for the immediately preceding year i.e A.Y 2016-17 the assessee had offered the business profit as per his financials.

7. In the said balance sheet assessee had debtors of Rs. 9,01,760/- which are also reflected in the return of income for the A.Y 2016-17 and at the same time the debtors balances as on 31.03.2017 as per return of income was shown as 'Nil'. Therefore it was argued that the outstanding debtors balance of Rs. 9,01,760/- was realized during the year under consideration in cash and was available with the assessee for deposit. The Ld. AR further argued that

assessee had declared income of Rs. 3,55,910/- from the business and the cash was deposited during the month of November 2016. Therefore, the proportionate amount was available for cash deposit. But all those facts have been ignored and not considered by the Ld. CIT(A) while adjudicating this ground.

8. Be that as it may, I also noticed that Ld. CIT(A) rejected the ground of appeal raised by the assessee by mentioning that the source of cash deposited during the demonetization period remains unexplained by the assessee and there is no discussion in the entire order with regard to the **balance sheet and the entries contained therein which the assessee had placed on record**. Therefore in my view the entire controversy can be sorted out in case the matter is restored to the file of CIT(A). Therefore, considering the above factual and legal position the Bench feels that the ends of justice would be met only if the matter is restored back to the file of the CIT(A) to decide the matter afresh and the rights of the revenue would also not be prejudice. Even Ld. DR has no objection in sending the matter back for fresh disposal. Thus the appeal of the assessee is restored to the file of CIT(A) to decide it afresh by providing opportunity of hearing to both the parties. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings and the appeal of the assessee is thus allowed for statistical purposes.

6. Before parting, I make it clear that my decision to restore the matter back to the file of the CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the CIT(A) independently in accordance with law.

7. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 19.12.2024.

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 19/12/2024

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai

		Date
1.	Draft dictated on	16.12.2024
2.	Draft placed before author	16 .12.2024
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk	
10.	Date of dispatch of Order.	
11.	Dictation Pad is enclosed	