

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.20/Del/2024

निर्धारणवर्ष/Assessment Year: 2017-18

AGM Brothers C-162, 3 rd Floor, Gali No.06, Mahender Enclave, New Delhi.	बनाम Vs.	ITO Ward 35(2), New Delhi.
PAN No.AAVFA4521H		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितीकीओरसे /Assessee by	Shri Yogesh Harjai, CA
राजस्वकीओरसे /Revenue by	Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	24.01.2025
उद्घोषणाकीतारीख/ Pronouncement on	07.02.2025

आदेश /O R D E R

This appeal is filed by the assessee against the order of the Ld. CIT(Appeals)-NFAC, Delhi dated 06.11.2023 for the AY 2017-18 in sustaining the addition of Rs.43,55,357/- u/s 68 of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the assessee, AGM Brothers is a partnership firm which was incorporated on 01.01.2012 with Anupam Gupta and Mukesh Kumar as partners. The firm is engaged in wholesale and retail trading. Ld. Counsel submits that the firm was dissolved effectively from 01.04.2016 as

Mukesh Kumar one of the partners exited. Anupam Gupta took over the assets, liabilities and business of the partnership firm and continued the business as a proprietorship business. Ld. Counsel submits that the bank account in which cash deposits were made belongs to Anupam Gupta who had also filed return declaring these bank accounts and the deposits therein. Ld. Counsel submits that since this bank account in which the cash deposits were made does not belong to the firm the addition made by the Assessing Officer is to be deleted. The Ld. Counsel also filed brief synopsis as under: -

1. *“Partnership Firm-M/s AGM Brothers (The Appellant): Incorporated on 01.01.2012 with Anupam Gupta and Mukesh Kumar as partners, engaged in wholesale and retail trading.*
2. *Dissolution: The firm dissolved effective 01.04.2016. Mukesh Kumar exited, and Anupam Gupta took over the assets, liabilities, and business.*
3. *Business Transition: Anupam Gupta continued business as a proprietorship.*
4. *DVAT Amendment for change in business constitution: Filed and approved on 28.04.2016 concerned DVAT authorities. Relevant documents are submitted and are placed on records.*
5. *Bank Account: The firm's HDFC account (the bank account in question in which cash was deposited) in a personal capacity for carrying on the business by Mr. Anupam Gupta who made the cash deposits during the year, including the demonetization period.*
6. *Income Tax Cash Deposit Inquiry Response: Clarification was filed that the account doesn't relate to the firm's PAN.*

7. *ITR Filing: Anupam Gupta declared the bank details and cash deposits in his ITR for A.Y. 2017-18. ITR alongwith the complete form is submitted and is placed on records.*
 8. *Correlation: Deposits in the account match turnover declared in the return of income.*
 9. *Bonafide Conduct: Mr. Anupam Gupta declared full bank account details and cash deposits in the ITR,- which shows transparent conduct. An affidavit to this extent is submitted.*
 10. *Income Tax Department: Had all the information but did not enquire Anupam Gupta, indicating satisfaction with the declarations.*
 11. *Demand Creation: The tax department proceeded with half the information, resulting in high demand on the appellant.*
 12. *Appeal Grounds: Ld. CIT(A) Dismissed appeal without a personal hearing while ignoring the relevance of provided documents based on whims and surmises.*
 13. *Facts: All transactions carried out in the impugned bank account including the cash deposit during the demonetization period pertain to Mr. Anupam Gupta personally, who had acquired the entire business w.e.f. 01.04.2016 including the bank account and used the same for carrying on the business in the capacity of a Proprietor.”*
3. On a query from the Bench to the Ld. DR as to whether the matter be restored to the Assessing Officer for verification of this fact the Ld. DR expressed no objection.
4. Heard rival submissions. In the light of the submissions of the Ld. Counsel for the assessee that the bank account in which the

cash deposits were made does not belong to the assessee firm and it belongs to one of the partners who retired and continued the business of the partnership firm, this addition is restored to the file of the Assessing Officer for examination afresh and determination in the light of the above submissions of the Ld. Counsel for the assessee. The Assessing Officer shall examine afresh the contentions of the assessee and pass afresh order in accordance with law after providing adequate opportunity of being heard to the assessee.

5. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 07/02/2025

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 07.02.2025

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi