

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)**

**ITA No. 202/AGR/2023
(Assessment Year: 2017-18)**

Ranjan Kumar Arora, 5/30, Nehru Road, Farrukhabad, UP- 2096625 (Appellant) PAN:AAKPA0524D	Vs.	Income Tax Officer, Circle-4(2)(1), Farrukhabad (Respondent)
--	-----	---

Assessee by :	None
Revenue by:	Shri Shailendra Srivastava, Sr. DR
Date of Hearing	03/02/2025
Date of pronouncement	03/02/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.202/AGR/2023 for AY 2017-18, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 12.10.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.11.2019 by the Assessing Officer, ACIT, Circle-4(2)(1), Farrukhabad (hereinafter referred to as 'Id. AO').
2. None appeared on behalf of the assessee despite issuance of notice. Hence we proceed to dispose of this appeal after hearing the Id DR and based on materials available on record.
3. The assessee has raised the following grounds of appeal:-

"1. That the National Faceless Appeal Centre (NFAC), Delhi has erred in law and on facts in sustaining the addition of Rs. 11,65,000/-u/s 68 of the Income Tax Act, 1961 by considering the same as unexplained cash credit

and another addition of Rs. 2,37,000/- u/s 69 of Income Tax Act, 1961 by considering the same as unexplained investment.

2. That the authorities below have erred in law and on facts in not accepting that the amount of Rs.11,65,000 deposited in the bank account was the money earned from cash sales in respect of which audited books of accounts maintained in the regular course of business along with all the sales invoices, stock registers have been duly provided.

3. That the authorities below have erred in law and on facts in not accepting that 37,000/- cash deposit of Rs. 2,37,000/- was on account of savings of assessee's father which he left with the assessee at the time of his demise back in 2010 for use of the same at the time of his grand-children's marriage.

4. That the authorities below have made additions u/s 68 & 69 of Income Tax Act, 1961 on the basis of presumption, hypothesis and conjectures and completely brushed aside all the evidences along with explanations regarding the source of investment and books of accounts provided by the assessee.

5. That the authorities below have erred in law by invoking the provisions of section 115BBE of the Income Tax Act, 1961 and calculating income tax in accordance with the same."

4. The Assessee is an individual and had filed his return of income for the assessment year 2017-18 on 7-11-2017 declaring total income of Rs. 6,76,390. During the course of assessment proceedings, the Learned AO sought explanation for the source of cash deposits made in the bank account and the investment made by the Assessee. The Assessee is engaged in the business of retail trade of gold jewellery, bullion, silver articles etc. A sum of Rs 2,37,000 was deposited in cash in savings bank account of the Assessee and Rs 11,65,000 in ICICI bank current account of the Assessee. The Learned AO asked for the source of deposits made in savings bank account as well as the current account of the Assessee during the course of assessment proceedings. It was explained that certain sums were handed over to the Assessee by his deceased father in the year 2010 which was intended for the marriage of the grandchildren of the Assessee's father, i.e.

the children of Assessee and his sisters. The Assessee submitted that the said money was preserved as received for fulfilling the wishes of his late father. In support of this explanation, the Assessee was not able to produce any cogent evidence before the Learned AO. The Learned AO observed that out of Rs 19,65,000 which stood deposited in the current account in specified bank notes, a sum of Rs 8,00,000 was out of withdrawal made from the bank for specifically depositing in civil court in relation to out of court settlement of family dispute. This fact was accepted by the Learned AO as a source available to the Assessee and remaining sum of Rs 11,65,000 which was deposited in the bank account was treated as unexplained cash credit under Section 68 of the Act in the hands of the Assessee. Similarly, a sum of Rs 2,37,000 stood deposited in the bank account of the Assessee. The Assessee always pleaded that entire cash deposits apart from the monies received from his late father, were out of cash sales made during the year under consideration. Hence, there cannot be any addition separately to be made towards cash deposits as the cash deposits stood properly explained by proper sources. However, the Learned AO was not convinced with the same and proceeded to treat the entire cash deposits of Rs 11,65,000 and 2,37,000 as unexplained under Section 68 and 69 read with Section 115BBE of the Act and completed the assessment. This action of the Learned AO stood confirmed by the Learned NFAC.

5. None appeared on behalf of the Assessee to buttress the addition made by the Learned AO which stood sustained by the Learned NFAC. However, the Assessee had always tried to explain that there were sales made by him in his business and those cash sales were already reflected in the return of income filed by him. Out of the said cash sales, the Assessee had deposited the cash in the bank account during the demonetization period. We find that the sales disclosed by the Assessee had

been duly accepted by the revenue. However, the Assessee had also sought to explain that certain sums were indeed given by his late father in the year 2010 for the purpose of marriage of grandchildren in the family. But the Assessee had not produced any cogent evidence to support the same. However, the explanation given cannot be disbelieved completely as it is the usual practice for the grandfather to deposit certain monies in the custody of the son to take care of the marriage expenses of the grandchildren. In the instant case, the Assessee had filed his return based on audited books of accounts and the said books of accounts were also placed on record before the Learned AO. The main grievance of the revenue is that there was abnormal increase in sales during September and October 2016 in cash. The period referred there to are festival seasons and it is usual practice to make purchase of jewellery on auspicious occasions and hence there is nothing wrong in sales getting increased abnormally during those festival seasons. The Assessee had produced the stock register and there was no deficiencies found therein. To the extent of sales made by the Assessee, the stocks had been correspondingly reduced. Hence, the cash deposits made out of cash sales need to be treated as properly explained by the Assessee and no addition could be made thereon. However, the Assessee had also stated that he had received cash from his late father for the purpose of marriage of grandchildren in the family, which though not supported with cogent evidence, cannot be disbelieved in total. Hence, in order to meet the ends of justice, a sum of Rs 2 lakhs is being treated as unexplained in the hands of the Assessee. As against the total additions made by the Learned AO, only a sum of Rs 2 lakhs is being sustained in the instant case. Further, the Hon'ble Madras High Court in the case of SMILE Microfinance Limited vs ACIT in WP (MD) No. 2078 of 2020 and WMP (MD) No. 1742 of 2020 dated 19-11-2024 had categorically held that enhanced rate of tax at 60% as provided in section 115BBE of the Act could be made

applicable only from Assessment Year 2018-19 onwards and cannot be applied for earlier years.

6. In view of the aforesaid observations and respectfully following the decision of Hon'ble Madras High Court supra, we direct the Learned AO to consider only a sum of Rs 2,00,000/- as unexplained money under section 69A of the Act to be taxed at maximum marginal rate and not at an enhanced rate of 60%. We would like to make it very clear that this decision is rendered in the peculiar facts and circumstances of the instant case and cannot have any precedence value. The grounds raised by the assessee are partly allowed.

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

Order pronounced in the open court on 03/02/2025.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 03/02/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi