

**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. 209/AGR/2023
(Assessment Year: 2017-18)**

Jai Narayan Maheshwari,	Vs.	ITO,
17/126, Pipal Wali Gali,		Ward-4(1)(3),
Jaiganj, Aligarh, UP		Aligarh
(Appellant)		(Respondent)
PAN:ABUPM7189B		

Assessee by :	Shri Pankaj Gargh, Adv
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.209/AGR/2023 for AY 2017-18, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. 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 05.11.2019 by the Assessing Officer, ITO, Ward-4(1)(3), Aligarh (hereinafter referred to as 'ld. AO').
2. The only effective issue to be decided in this appeal is as to whether the Learned NFAC was justified in confirming the addition made on account of cash deposits made during the demonetization period in the sum of Rs 22,98,000/- in the facts and circumstances of the instant case.
3. We have heard the rival submissions and perused the materials available on record. The assessee had submitted that the only source of

income for him is income from rent and interest income, which were duly disclosed in the return of income filed for the year under consideration. No business whatsoever was carried out by the assessee. The assessee had indeed filed the cash book for the financial years 15-16 and 16-17 before the Learned AO. The Learned AO observed that there were cash deposits made in the sum of Rs 22,98,000/- in the bank accounts during the demonetization period. In response to the query raised by the Learned AO with regard to explanation of the source, the assessee submitted that there were cash withdrawals made by him from the said bank accounts, which should subsequently deposited in the bank account pursuant to announcement of demonetization by the Government. It was also pleaded that rental income has been received by the assessee in cash, which is also available as a cash source for the assessee to explain the cash deposits. However, the Learned AO was not convinced with the replies given by the assessee and ultimately, the Learned AO proceeded to treat the cash deposits made in the bank accounts as unexplained money under Section 69A read with Section 115BBE of the Act and completed the assessment, which stood confirmed by the Learned NFAC. Aggrieved, the assessee is in appeal before us.

4. We find the only evidence that has been submitted by the assessee is the cash book for financial years 2015-16 and 2016-17 proving that he had sufficient cash balance in his kitty to explain the source of cash deposits made during the demonetization period. It is a fact that rental income received by the assessee is duly reflected in the said cash book which was separately offered to tax in the return of income. But on perusal of the cash book, we find that there is insufficient drawing reflected by the assessee. We find that the assessee has been trying to explain the source for availability of cash out of cash withdrawals made in financial year 2015-16 in

bulk sums, which were carried over to the year under consideration. But even after the said withdrawal of bulk sums from the banks, on perusal of the cash book, it is noticed that assessee has been frequently withdrawing cash on a regular basis. If there were bulk withdrawals made by the assessee in earlier period and that money is available with the assessee as cash balance, then there would be no requirement for the assessee to make further withdrawals from the bank account. This act of the assessee was not appreciated by the lower authorities, thereby causing a suspicion that the earlier withdrawals were indeed utilized by the assessee for some purpose and that the same is not available as a cash source with the assessee. Similarly even during the financial year 2016-17, it is noticed from the cash book that assessee has been making bulk withdrawals and has been making withdrawals in odd amounts. Few such instances are withdrawals on 18-04-2016 for Rs. 44,000; withdrawals on 7-05-2016 for Rs. 12,000; withdrawals on 22-07-2016 for Rs. 72,500; withdrawals on 29-08-2016 for Rs. 72,000; withdrawals on 21-10-2016 for Rs. 121,400, so on and so forth. Hence it could be reasonably presumed that these withdrawals were made for specific purposes to utilize the same for some other requirement of the assessee. Accordingly, that money cannot be available with the assessee to explain the cash deposits made during the demonetization period. Further the assessee had shown very insufficient drawings of Rs. 25,000 per month for both the financial years 2015-16 and 2016-17 towards household expenses. Pursuant to these deficiencies existing in the behaviour of the assessee, the bench suggested for estimated addition on account of cash deposits to the extent of 50% to the learned AR which was accepted by the learned AR of the assessee. Accordingly, we direct that only a sum of Rs 11,49,000/- need to be added as unexplained cash under section 69A of the Act. 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.

5. 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 11,49,000/- 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.

6. 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

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

ASSISTANT REGISTRAR
ITAT, New Delhi