

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE SMC BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.381/Ind/2023
(Assessment Year: 2017-18)

Abhay Kataria, 153, Teachers Colony, Near Mahavir Vatika, Neemuch	Vs.	ITO, Neemuch
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AJFPK9979G		
Assessee by	S/Shri Pankaj Shah & Soumya Bumb, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	27.02.2025	
Date of Pronouncement	27.02.2025	

O R D E R

This appeal by the assessee is directed against the order dated 14.08.2023 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for A.Y.2017-18 which is arising from the assessment order u/s 144 of the Act dated 19.12.2019 framed by Assessing Officer, Neemuch.

2. Assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) ("CIT(A)") erred in upholding the addition made by the Assessing officer to the income of the Appellant. The Appellant prays that the additions be directed to be deleted.

2. On the facts and circumstances of the case and in law the learned Assessing Officer erred in making addition of the cash deposit during demonetization period of Rs. 10,00,000/- and treating it as unexplained u/s 69A of the Act. Therefore the said order is illegal, void and unwarranted and it is prayed that the said addition be directed to be deleted.

3. Without prejudice to above, on the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) ("CIT(A)") erred in applying provisions of Section 115BBE in the case of the Appellant by failing to take into consideration the evidences given under submissions. Accordingly, the Appellant prays that the application be directed to be deleted.

4. On the facts and circumstances of the case and in law the learned Assessing Officer erred in making addition of Rs. 70180/- treating it as income of the appellant on estimation basis. Accordingly, the Appellant prays that the application be directed to be deleted.

5. On the facts and circumstances of the case and in law the learned Commissioner of Income tax (Appeals) ("CIT(A)") erred in not giving reasonable opportunity of being heard and passed the order without considering the fact that the appellant has requested for adjournment, and so the Appellant prays that the impugned order being illegal, unwarranted and in gross violation of principles of natural justice be directed to be decided on merits.

6. The Appellant craves leave to add, alter or amend all or any of the foregoing grounds of appeal."

3. At the outset Ld. Counsel for the assessee requested for no pressing Ground No.4 and the same is dismissed as not pressed.

4. The effective issue remaining for adjudication is that whether the Ld. CIT(A) erred in upholding the addition of Rs.10,00,000/- made by the Ld. A.O u/s 69A of the Act for alleged unexplained cash deposit in the bank during the demonetization period.

5. Facts in brief are that the assessee is an individual and carrying on the business of running a shop in the name of MP Online Kisok Center. The assessee accepts amount from various customers for further deposit towards Telephone, Electricity, Tuition/Exam fees etc. Based on the reason that the cash of Rs.12,17,000/- was deposited in the bank account held with SBI, Neemuch during 9.11.2016 to 31.11.2016 case of the assessee selected for scrutiny. The assessee did not file any return of income. Thereafter certain opportunities were given and notice u/s 142(1) of the Act was issued. Ld.A.O concluded the assessment by observing that except the alleged cash deposit of Rs.10,00,000/- the remaining amount deposits at Rs.70,17,572/- relates to the transactions of MP Online services and on which 1% of income was estimated by Ld. A.O at Rs.70,176/- . For the cash deposited during the demonetization period at Rs.10,00,000/- Ld. A.O treated

it as unexplained income and added the same in the hands of the assessee invoking Section 69A r.w.s. 115BBE of the Act. Income assessed at Rs.10,70,180/-. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed. Now the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that the alleged sum though deposited during the demonetization period but has been utilized for making on line payment on behalf of students to various universities which mainly included Vikram University, Ujjain and he further referred to the paper book placed at page 25 to 30 providing the details of the students for whom examination fees was deposited by the assessee through its MP Online Kisok Centre. He submitted that the alleged sum is part of gross receipt of Rs.80,17,572/- but Ld. A.O was treated only the alleged sum as unexplained cash and for the remaining amount has estimated it as the business receipt including income @1%. He further stated that since the alleged sum is part of business receipt only the income element can be added but not the total sum.

7. On the other hand Ld. Departmental Representative vehemently argued supporting the orders of the lower authorities. He further stated that the assessee was not authorized to received old denomination notes during the demonetization period and therefore the impugned addition deserves to be sustained.

8. I have heard rival contentions and perused the records before me. Admittedly the assessee is running MP Online Kisok Centre and is regularly making payments on behalf of its customers towards, electricity, telephone, mobile, examination fees etc. In the bank account maintained by the assessee total credit during the year was Rs.80,17,572/- out of which Ld. A.O has accepted sum of Rs.70,17,572/- as a genuine business transaction of MP Online services but denied to treat the amount of Rs.10,00,000/- merely on the ground that it was received during the demonetization period. Though Ld. Departmental Representative has claimed that assessee was not authorized to receive old demonetization notes but this aspect can be dealt with the separate authorities prescribed under law. I find that the amount deposited in the bank account has been immediately utilized for making the payment for

examination fees on behalf of the students. Ld. Counsel for the assessee filed the details for the amount of Rs.4,54,390/- with the name of students and the course they are pursuing. For the remaining amount also the major payment has been made to Vikram University, Ujjain but the students details are not available.

8.1 Now in the given facts and circumstances of the case where the alleged sum has been immediately utilised for making payments through on line mode to other authorities including universities on behalf of the students and also considering the fact that the assessee has been regularly carrying out the said activities in the past also, I am of the considered view that firstly the alleged sum cannot be categorized as unexplained money u/s 69A r.w.s. 115BBE of the Act and secondly only the income element can be estimated. But since the assessee has not provided complete details of the students, I estimate the income of Rs.50,000/- on the alleged sum of Rs.10,00,000/- and give part relief to the assessee. Accordingly grounds of appeal raised by the assessee are partly allowed.

In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 27.02.2025.

Sd/-

(MANISH BORAD)
Accountant Member

Indore, 27.02.2025
Dev/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore