

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA No.102/Agr/2024
Assessment Year: 2017-18

Radha Gupta, 29/285B, Katra Hazi Hasan, Kala Mahal, Agra.	Vs.	Income-tax Officer Ward 2(1)(3), Agra.
PAN : ABVPG6150B		
(Appellant)		(Respondent)

Assessee by	Sh. Anurag Sinha, Advocate
Department by	Sh. Shailendra Shrivastava, Sr. DR

Date of hearing	17.02.2025
Date of pronouncement	17.02.2025

ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2017-18, arises against the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre [in short, the "CIT(A)-NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1060101709(1) dated 25.01.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. This assessee's appeal raises following substantive grounds :

“1. BECAUSE, upon overall consideration of the facts and in the circumstances of the case the authorities below were highly unjustified in making and sustaining addition of Rs. 1,51,04,500/-.

2. BECAUSE, the Ld. CIT(A), NFAC had passed the order without considering the submission made by the appellant.

3. BECAUSE, the authorities below failed to appreciate that deposits in Bank Account represented Sale proceeds of Silver Bullion disclosed under IDS, 2016. The appellant had already made the disclosure under IDS, 2016 by filing form No. 1 on 28.09.2016 and sold the Silver Bullion during the months of October and November and thus deposited the amount in her bank account. Demonetization was declared on 08.11.2016, thus the disclosure was made before the demonetization was declared.

4. BECAUSE, alternatively and without prejudice to the above, in any view of the matter cash deposits made cannot be added under section 69A of the Act without consideration of the facts of the case, nature of transaction and evidences on records particularly Form No. 1 and Form No. 4 of IDS Rules, 2016, Valuation Report dated 23.09.2016, etc.

5. BECAUSE, the authorities below erred in law and on facts in not considering the reply filed by the appellant viz. the PAN cards and Adhaar cards of the purchasers and Shri Abhishek Bansal, etc.

6. BECAUSE, the Ld. CIT(A), NFAC was highly unjustified in arbitrarily rejecting the law laid down by the various Tribunals and High Courts produced before his good self.

7. BECAUSE, the Ld. CTT(A), NFAC was unjustified in not considering that on identical issue, the addition made in the HUF of the brother of the assessee was deleted by the Ld. CIT(A). NFAC vide their order ITBA/NFAC/S/250/2023-24/1059274674(1) on 02.01.2024.

8. BECAUSE, in any case and in any view of the matter impugned addition and impugned assessment order is bad in law, illegal, unjustified, contrary to facts and law based upon incorrect assumption of facts and further without allowing adequate opportunity of hearing in violation of principals of natural justice and therefore, the additions made deserves to be quashed.

9. BECAUSE, the assessment order to the extent making addition is bad in law and against the facts of the case.

10. BECAUSE, assessee denies its liability against Interest charged under section 234A &234B is incorrectly charged.”

3. Heard both the parties at length. Case file perused.

4. It next emerges during the course of hearing with the able assistance coming from both the parties that the learned lower authorities have made section 69A addition of Rs.1,51,04,500/- in assessee's hands thereby rejecting her explanation attributing the deposits in bank account to the cash sale proceeds of silver items and silver bullion, as the case may be, declared in IDS, 2016. Learned counsel has referred to assessee's detailed submissions as well as evidence(s) in paper book running into 91 pages that both lower authorities have not examined the corresponding source of deposits already explained as arising from the cash sales of silver items.

5. The Revenue, on the other hand, has drawn strong support from the CIT(A)-NFAC lower appellate discussion rejecting the assessee's case as under :

"[1.5] Discussion of facts and decision on merits:-

In Form-35 under Pt. 11. Statement of facts is reproduced here as under.

"The assessee has filed her ITR on 17.12.2017 showing an income of Rs. 16,48,236 which includes income under the head salaries of Rs.8,70,000, income under the head house property of Rs. 1,59,600 and interest income of Rs.6,18,636. The assessee case was selected for scrutiny under CASS. The assessee has deposited SBN of Rs. 1,51,04,500 in her bank account maintained in Canara Bank having account number 0322101027093 which was nothing but the sale proceeds of silver bullion disclosed under IDS, 2016. The assessee has disclosed silver bullion of Rs. 1,57,25,908 under IDS, 2016. The assessee has also filed affidavit in this regard but the AO has not tried to cross examine the affidavit and thereby, violated the law laid down by the Apex Court. Out of the total silver bullion disclosed, the assessee has sold silver bullion of Rs. 1,52,00,118. The assessee has not earned any capital gain on sale of this silver bullion as the cost of silver bullion exceeds the sale price. Therefore, the assessee has not disclosed the sale of this silver bullion in her return of income. The assessee has sold some silver bullion through Shri Abhishek Bansal, the broker to unregistered persons. During the course of assessment proceedings, the assessee has filed the photocopies of the

PAN card along with adhaar card of Shri Abhishek Bansal and unregistered purchasers. It is also submitted that in the reply dated 26.12.2019, the assessee has requested the AO to call the persons by the issuing the summons under section 131 to verify the credentials. But ignoring the evidences filed during the course of assessment proceedings, the AO has not accepted the assessee version on the ground that the assessee has not made any sale of silver bullion before demonetization period and therefore, the AO has made the addition of Rs. 1,51,04,500 under section 69A read with section 115BBE of the Act. Now, the assessee is in appeal before your honour".

While the appellant claimed that the cash deposited during the demonetization period was received from sale of Silver Bullion disclosed under IDS 2016 of Rs.1,57,25,908/-. The AO examined the details submitted and found that no evidence for purchase or sales of silver bullion under the IDS declaration. The Form no.4 of IDS 2016 and the details furnished by the appellant during the declaration revealed that no such silver was declared but some undisclosed business income pertaining to A.Y.13-14 was offered to tax. The fact that the appellant. was not dealing in trading of silver bullion and that it was claimed that as personal assets sold, the onus was on the appellant to prove that the transaction actually happened.

The appellant furnished details of declaration under IDS wherein the income declared was in the form of investment in other precious metal of Rs.1,57,25,908/-. She stated that she had sold the silver to unregistered persons and received cash. She gave the name of one Shri Abhishek Gupta and 10 others but could not provide details of quantity and value of silver allegedly sold.

The AO concluded as follows:

"It is pertinent to mention that assessee is not doing the business of sale/purchase of silver bullion. Thus the assessee can sell the silver bullion as personal asset. Thus it cannot be believed that silver of the value of Rs. 1,52,00, 118/- was sold, between 30.09.2016 (date of filing of IDS form by the assessee) and 8.11.2016, when the demonetization of currency was declared, in cash to unidentified persons of Rs. 1,52,00118/-. The case law cited by the assessee of Hon'ble Delhi High Court in the case of CIT vs Jindal Dyechem Pvt Ltd. is not applicable in its case as the assessee HUF is not dealing in trading of silver bullion. Further, in the year under consideration as per provisions of section 206C(1) (D) of the IT Act there was a liability of TCS on sale of bullion exceeding Rs. 2 Lakhs in cash. No such TCS has been shown by the assessee on the sale of silver bullion of Rs. 1,52,00, 118/-. As regards the assessee's reply that some of the silver was sold through Shri Abhishek Gupta, and the short-term capital loss incurred sale of silver, it is pertinent to mention that the assessee has filed return in form no. 2 declaring income under the head salary and income from other sources. In the columns of capital gain and its schedule CG no such sale has been shown. This clearly goes to show that no such silver

was sold in the year under consideration because the return filed in form no.2 is duly verified by the assessee and in that return no sales have been declared. Thus the theory of sales made or some of the sale made through Shri Abhishek Gupta is a concocted story and after thought to explain the source of cash deposited during demonetization period. Thus the amount of Rs. 1,51,04,500/- deposited during demonetization period is treated as unexplained money earned from income from undisclosed sources and no satisfactory explanation could be furnished regarding the source of said cash deposit. As such it is liable to be added to the income of the assessee u/s 69A of the IT Act, 1961".

During this proceeding, the appellant filed the details which were produced before the AO. It is seen from form no.4 of IDS declaration, under the head- description of assets where undisclosed income declared in the form of investment asset, the appellant mentioned "business income". There is no reference to silver bullion purchased in the declaration. Further, the income to tax was relating A.Y.13-14. If the silver bullion was bought during the year or later, the invoice of silver bullion purchased, mode of purchase, name and address of the vendor from whom it was purchased should have been provided. Similarly, if such silver bullion was sold, in the year in which it was sold, name and address of the parties to whom it was sold, etc should have been provided to justify the cash deposits during demonetization. Without any of these details, the appellant refer to some case laws without realizing that facts of each case is unique and the evidences valued are also different. No direct inference can be drawn from these judgements unless the appellant provide adequate details for examination.

From the materials available on record as in the assessment proceedings and in this proceeding, the appellant has failed to discharge the initial onus of explaining the source and nature of cash deposits appearing in her bank account. The AO therefore rightly added the unexplained money to the income of the appellant under Section 69A of the Act. Therefore, it is found unnecessary and imprudent to disturb the order of the AO and his findings. Therefore, the impugned assessment order is upheld and no interference is called for.

[2] Accordingly, all the grounds of appeal are dismissed."

6. We have given our thoughtful consideration to the foregoing vehement rival contentions and we find no merits in this assessee's case. We make it clear that given the fact that the assessee had made impugned cash deposits and claimed the same to be originating from cash sales of silver items, it was her bounden duty to plead and prove all the facts and

her failure to this effect makes us to conclude that both lower authorities have rightly made addition in light of preponderance of human probabilities as per Sumati Dayal vs. Commissioner Of Income-Tax (1995) 214 ITR 801(SC). We further make it clear that even if assessee's case is accepted that she has made declaration of silver items in her IDS, 2016, she is unable to prove sale thereof. We accordingly uphold the first addition in principle therefore.

7. So far as the assessee's second plea regarding invocation of section 115BBE for tax rate purpose is concerned, the same deserves to succeed in light of SMILE Microfinance Ltd. vs. ACIT, W.P. (MD) No. 2078 of 2020 & 1742 of 2020 dated 19.11.2024 (Mad). The same applies *qua* transaction on or after 01.04.2017 only. The Assessing Officer to make his fresh computation under normal provision therefore.

8. This assessee's appeal is partly allowed.

Order pronounced in the open court on 17.02.2025.

**Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Dated: 17.02.2025

*aks/Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra