

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH”, KOLKATA

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 431/KOL/2025
Assessment Year: 2017-2018**

Salt Lake Service Station,

D-29, Salt Lake City,

Kolkata - 700064

[PAN: AAMFS2099B]

..... **Appellant**

vs.

Deputy Commissioner of Income Tax,

49(1), Kolkata,

Uttarapan Complex, Ultadanga,

Maniktala, Civic Centre,

Kolkata - 700054

..... **Respondent**

Appearances by:

Assessee represented by : Sanjay Chatterjee, C.A.

Department represented by : Sanat Kumar Raha, CIT-DR
S.B. Chakraborty, Sr. DR

Date of concluding the hearing : 23.07.2025

Date of pronouncing the order : 24.07.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), dated 02.01.2025, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

1.1 In this case, the Ld. AO vide order dated 16.12.2019 has made four additions on account of cash deposited during demonetisation period under Section 69A of the Act (Rs. 6,06,52,500/-), disallowance under Section 36(1)(v) of the Act (Rs. 22,654/-), disallowance under Section 40(a)(ia) of the Act (Rs. 54,000/-) and disallowance under Section 37(1) of

the Act (Rs. 8,653/-). Aggrieved with this action, of the Ld. AO the assessee approached the CIT(A) where the assessee could succeed on some small issues but the major additions under Section 69A of the Act and the addition under Section 36(i)(v) of the Act were sustained.

1.1 Further aggrieved, the assessee has approached the ITAT with the following grounds:

“1. That on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) at National Faceless Appeal Centre was not justified in treating the cash deposits to bank during the demonetization period amounting to Rs. 6,06,52,500/- as unexplained money u/s 69A of the Income Tax Act, 1961 when such deposits were made into the regular bank account of the Appellant and were part of the sale proceeds.

2. That on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) at National Faceless Appeal Centre was not justified in considering cash deposit to bank for two months during the demonetization period amounting to Rs 6,06,52,500/- as unexplained and under identical situation accepting the cash deposit to bank for the remaining ten months of the year as explained.

3. That on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) at National Faceless Appeal Centre was not justified in disallowing EPF deposit of Rs. 22,654/- on the ground of late deposit of the contribution as the same was deposited within the extended due date notified by the EPF Authorities and hence could not have been considered within the sweep of Explanation 1 to section 36(1)(va) of the Income Tax Act, 1961.

4. That on the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) at National Faceless Appeal Centre was not justified in invoking Section 115BBE of the Act which lead to penalty u/s 271AAC(1) of the Act since the impugned amount in question represents business receipts and part of the income from business.

5. That on the facts and circumstances of the case, order passed by the learned Commissioner of Income Tax (Appeals) at National Faceless Appeal Centre is otherwise perverse and has been passed in violation of the principles of natural justice without taking into consideration the ground-wise arguments filed in the written submission and also the documents in Paper Book uploaded in e-proceedings.

6. The Appellant craves leave to add, alter or abandon one or more ground(s) of appeal in the course of hearing of the appeal by the Hon'ble Bench.”

2. Before us, the Ld. DR relied on the written submissions filed on 14.07.2025 and a detailed paper book running into 247 pages. The Ld. AR

read out from the written submissions, which may be extracted for reference:

“In the page no. 5 of 8 of the Appellate Order, the CIT(A), NFAC has observed that: However, the Appellant has failed to furnish any details to support his claim. This is an erroneous observation and consequently the decision reached on this basis was also incorrect as well as perverse. No cognizance was given by the CIT(A), NFAC to the written submission made, revised grounds filed and documents including cash and bank books filed in Paper Book during Appellate proceedings. An index of the contents of such Paper Book has been attached in Pag-27 to 28 of the Appeal Memorandum.

Instead of examining the documents uploaded in the Paper Book (pages 1 to 200) in the course of appellate proceedings, the CIT(A), NFAC had called for copies of audit reports for AY 2016-17 to AY 2018-19 (all of which were available to him through the access in ITD portal) and statement from IOCL for purchase of petro products when the allegation was related to cash deposit to bank during demonetization period. None of these documents demanded by the CIT(Appeals), NFAC had any impact over deciding the issues in hand. Hence, the appeal had been dismissed by NFAC on irrelevant considerations and without application of mind.

The CIT(Appeals), NFAC had failed to observe the lack of logical corroboration in the action of the learned Assessing Officer that during the FY 2016-17, cash deposit to bank in the 10 out of 12 months had been accepted as regular and correct and there was no doubt about the source thereof. Only for the 2 months of demonetization period, all cash deposit was considered as unexplained money for which recourse to addition under section 69A of the Act was taken. This has been done when all the cash deposit to bank were routed through regular books of accounts which were produced at the time of assessment proceedings which took place in physical mode but the Assessing Officer did not record such compliance. The cash deposit were part of turnover and no discrepancy could be found with the volume of cash deposit and turnover reported in the audited accounts. As a matter of ready reference, the comparative table provided in the Appeal Submission, which has been ignored by the CIT(Appeals), NFCA is attached with this submission and the same may be found in page no. 19 of the Appeal Memorandum.

Further, cash deposit to bank which is a part of the regular books of accounts of an assessee cannot be added under section 69A of the Act. The decision of the co-ordinate Bench in the case of ITO Ward 50(1), Kolkata vs Joydeb Kundu (ITA No. 8/KOL/2021, decision date 16-5-2023) may kindly be referred which has been attached herewith for ready reference. Similar decision has been taken in the following cases also:-

- 1. New Pooja Jewellers vs ITO, ITA No. 1329/KOL/2018*
- 2. ITO vs M/s Senco Alankar, ITA No. 10/KOL/2021*
- 3. Smt Teena Bethala vs ITO, ITA No. 1383/BANG/2019*

This is my humble submission before the Hon'ble Bench on behalf of the Appellant. It is prayed that based on the facts and circumstances and on appraisal of the

documentary evidences on record, proper remedy may kindly be granted to the Appellant and for such act of kindness on your part, we shall remain ever grateful.”

An important of comparative analysis of turnover, GP/NP, and cash deposits in the bank during the course of entire year and a comparison of cash deposited during November to December over a four-year period has been filed. Incidentally this comparative position was also before the Ld. CIT(A). This chart is important for determining the outcome of this case and hence the same is extracted as under:

Comparative Summary of Cash Deposits

| SI | Particulars | F.Y. 2014-15 | F.Y. 2015-16 | F.Y. 2016-17 | F.Y. 2017-18 |
|----|----------------------------------|-----------------|-----------------|-----------------|-----------------|
| 1 | Turnover (Cr) | 73.50 | 64.39 | 64.66 | 71.86 |
| 2 | Gross Profit (Cr) | 1.43 | 1.58 | 1.56 | 2.68 |
| 3 | GP (%) | 1.94 | 2.46 | 2.42 | 3.64 |
| 4 | Net Profit (Lakh) | 24.65 | 35.83 | 40.26 | 60.75 |
| 5 | NP (%) | 0.33 | 0.56 | 0.62 | 0.85 |
| 6 | Cash deposit to Bank (Cr) | 39.61 | 37.73 | 36.59 | 37.12 |
| 7 | 6 in % of 1 | 53.89 | 58.6 | 56.6% | 51.6% |
| 8 | Cash Dep (Nov to Dec) Cr. | 6.50 | 6.11 | 6.06 | 6.20 |
| 9 | Cash Dep rest of year Cr. | 33.11 | 31.62 | 30.53 | 54.55 |

2.1 The Ld. AR argued and stated that all manner of compliances were made before both the AO and the CIT(A) but in spite of that an adverse view has been taken in the case of the assessee.

2.2 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the rival submissions and have also gone through the records before us. It is seen that the assessee, being a petrol pump, has been habitually depositing large amounts of cash on daily basis during the course of entire year. In fact, it is seen that the position of cash deposit is virtually consistent over a four-year period and it is understood that in this line of business such large amounts of cash deposits are normal. From the comparative chart presented before the Ld. CIT(A) and

now presented before us (extracted above) also indicates that during the year under consideration the cash deposits during the November-December period since F.Y. 2014-15 is consistently between Rs. 6.06 Crores to Rs. 6.50 Crores. During the year under consideration, in fact, the cash deposit is Rs.6.06 Crores which is the lesser figure if one compares from F.Y. 2014-15 to F.Y. 2017-18. Apart from this the assessee's contention that the authorities below have doubted the cash deposit during the demonetisation period only and have accepted the cash deposited during the rest of the year is also not consistent with any logical interpretation of account statements. Thus, there is no hesitation in holding that the assessee has adequately demonstrated the reason and background for the impugned cash deposits and the authorities below have missed out in a taking a holistic view of this issue. Accordingly, the impugned addition under Section 69A of the Act is hereby directed to be deleted.

3.1 Regarding the addition of Rs. 22,654/- made under Section 36(1)(va) of the Act, it would be desirable if the contention of the assessee is examined by the Ld. AO and it needs to be verified whether the said deposit was made during the extended time available during the year under consideration. To this extent, this matter is remanded to the file of Ld. AO for necessary verification.

4. In result, the addition u/s 69A of the Act of Rs. 6,06,52,500/- is deleted and the addition of Rs. 22,654/- is remanded for verification.

5. In result, this appeal is partly allowed.

Order pronounced on 24.07.2025

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 24.07.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Salt Lake Service Station
- 2 Deputy Commissioner of Income Tax, 49(1), Kolkata
3. CIT(A)
4. CIT
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

1.