

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.70/NAG/2025
Assessment Year: 2017-18**

Mr. Mithilesh Jagdeo Singh Pawar, Ghatladki, Chandur Bazar, Maharashtra - 444720. PAN: BPFPP6167L	Vs.	ITO Ward-5 Besides DPS, Saturna Road, Maharashtra - 444605.
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Mrudul Bhusari, Ld. Adv
{Ld. Amicus Curie}

Revenue by : Shri Surjit Kumar Saha, Ld. Sr. DR

Date of Hearing : 26.06.2025

Date of Pronouncement : 09.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 11.12.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

2. Though notice was issued to the Assessee for the date of hearing on today i.e. 26.06.2025, however, the Assessee neither appeared nor filed any adjournment application. Therefore, in the constrained circumstances, this Court is inclined to decide this appeal as ex-parte, however, with the assistance of Ld. D.R. and Ld. Amicus Curie.

3. It appears from the orders passed by the authorities below that initially the Assessee had filed his return of income on dated 31.03.2018 declaring total income of Rs.4,07,450/- which was selected for scrutiny and resulted into passing the assessment order dated 26.12.2019 u/s 143(3) of the Act, whereby return of income was accepted.

4. However, subsequently the information was received by the Department that the Assessee had made cash deposit of Rs.16,43,600/- in M/s. Janata Sahakari Bank, Amaravati, during the demonetization period but had not shown the details of cash deposits accurately in the return of income. Thus, the source of cash deposits of Rs.16,43,600/- remained unexplained.

5. On the aforesaid information, the case of the Assessee was reopened u/s 147 of the Act by issuing a notice dated 31.03.2021 u/s 148 of the Act. The Assessee before the Assessing Officer (AO) has mainly claimed that his case for the A.Y. 2017-18 was completed on dated 26.12.2019 u/s 143(3) of the Act wherein the entire amount deposited by the Assessee was considered by the AO though not mentioned in the assessment order but that cannot be a ground for reopening of the case. The AO though considered the said claim of the Assessee but ultimately made the addition of Rs.16,43,600/- as unexplained investment u/s 69A of the Act.

6. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, however, despite of sending four notices, the Assessee except seeking adjournment on last occasion, eventually made no compliance and therefore in the constrained circumstances, the Ld. Commissioner decided the appeal filed by the Assessee on merit as well as on legal matrix.

7. Thus, the Assessee being aggrieved has preferred the instant appeal.

8. Heard the Ld. DR and the Ld. Amicus Curie. The Ld. Amicus Curie, at the outset, has demonstrated the fact that the AO vide notice dated 09.11.2021 u/s 142(1) of the Act issued during the re-assessment proceedings, inquired the same issue of cash deposit in M/s. Janata Sahakari Bank, Amaravati during the demonetisation period as examined by the AO in the original assessment proceedings, while issuing the notice dated 21.09.2018 u/s 143(2) of the Act, which resulted into passing the **original assessment order dated 26.12.2019 accepting the return of income as declared by the Assessee to the tune of Rs.4,07,350/- and therefore the reexamining of the same issue is unsustainable in the eyes of law.** The Ld. Amicus Curie further drew the attention of this Court to para nos.7 & 8 of the reasons recorded, as appears from page no.3 of the assessment order dated 30.03.2022 wherefrom it is clear that the AO had observed that in this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case the only requirement to initiate the proceedings u/s 147 of the Act is reason to believe which has been recorded as under:

“It is pertinent to mention here that in this case the Assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act”.

9. The Ld. Amicus Curie further drew the attention of this Court to the page no.5 of the aforesaid assessment order, wherein it appears that the AO has mentioned the fact that further the Assessee has contended that this issue was discussed in the earlier proceedings u/s 143(3) of the Act concluded on 26.12.2019 and the return of income of the Assessee was accepted. However, the issue

of cash deposit in M/s. Janata Sahakari Bank, Amaravati, was not discussed in the said assessment proceedings (for A.Y. 2017-18) u/s 143(3) of the Act.

10. Though the Ld. D.R. refuted the claim of the Assessee by relying on the orders passed by the Authorities below but not the aforesaid factual aspect, as demonstrated by the Ld. Amicus Curie.

11. Having considered the aforesaid peculiar facts and circumstances as demonstrated by the Ld. Amicus Curie, this Court observes that more or less the AO had formed a belief that source of cash deposit of Rs.16,43,600/- in M/s. Janata Sahakari Bank, Amaravati has escaped assessment, as no scrutiny assessment u/s 143(3) of the Act was made and the return of income filed by the Assessee was processed only u/s 143(1) of the Act and though the income of the Assessee was accepted as contended by the Assessee, however, the issue of cash deposit in M/s. Janata Sahakari Bank, Amaravati was not discussed in the said assessment proceedings u/s 143(3) of the Act.

This Court observes that from the reasons recorded and the assessment order dated 30.03.2022 u/s 147 r.w.s. 144B of the Act it appears that there are contrary facts to the effect that in the reasons recorded the AO has formed the belief with regard to the escapement of assessment qua deposit of Rs.16,43,600/- mainly on the reason that original scrutiny assessment u/s 143(3) of the Act was not made and/or the return of income filed by the Assessee was only processed u/s 143(1) of the Act. On the contrary, the AO in the assessment order, opined that the issue of cash deposit in M/s. Janata Sahakari Bank, Amaravati was not discussed in the said assessment proceedings u/s 143(3) of the Act. In the reasons recorded, the AO has formed the belief that no scrutiny assessment

u/s 143(3) of the Act has been made, whereas in the final outcome of the reassessment order acknowledged the fact that though original scrutiny assessment was made u/s 143(3) of the Act but issue qua cash deposit was not discussed in the said assessment proceedings.

12. Admittedly, the then AO in the original assessment proceedings scrutinized the return of income filed by the Assessee by passing the assessment order dated 26.12.2019 u/s 143(3) of the Act. The AO in the original assessment proceedings vide notice dated 07.10.2019 u/s 142(1) of the Act vide para no.10 of the annexure specifically asked the Assessee to furnish source of cash deposits made during the demonetization period. As it appears from the assessment order dated 26.12.2019 that the Assessee has furnished the information and details as called for such as audited balance sheet, profit & loss account, cash book along with annexures which were examined by the AO on tax check basis and ultimately accepted the return of income of Rs.4,07,350/- as declared by the Assessee. Admittedly, the AO has raised the query qua deposits made during demonetisation period as it appears from the notice issued dated 21.09.2018 u/s 142(1) of the Act during the original assessment proceedings and thereafter nothing new has been happened, except receiving the information by the Department. It is settled law that order of assessment u/s 143(3) of the Act having been passed, must be deemed to have been passed after considering all material facts in record to the queries raised. Once during the course of assessment proceedings a query was raised and replied, it will be presumed that the issue was the subject matter for consideration during the said assessment proceedings, notwithstanding the fact that there is no specific mention that particular issue in specific words in the order of assessment, as observed by the Hon'ble Jurisdictional High Court in

the case of DK Reality India Pvt. Ltd. vs. ACIT (Writ Petition No.2102 of 2022 decided on 15.02.2023). Thus considering the aforesaid peculiar facts and circumstances in totality as demonstrated by the Ld. Amicus Curie, this Court is of the considered view that the issue, which has already been examined in original assessment proceedings, cannot be reopened in the reassessment proceedings and thus the reassessment proceedings u/s 147 of the Act are unsustainable which would entail the assessment order passed in consequence thereof as invalid being void and ab-initio. Thus the assessment order is quashed by allowing appeal of the Assessee.

13. This Court appreciates the sincere efforts made and able assistance provided by the Ld. Amicus Curie for adjudication of this appeal, in its right perspective and proper manner.

Order pronounced in the open court on 18.09.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Nagpur.