

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT "SMC" BENCH, SURAT**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**आ.अ.सं./ITA No.668/SRT/2024 (AY 2017-18)**  
*(Hearing in Physical Court)*

|                                                                                                                                                       |                   |                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------|
| Om Sai Contractors,<br>210, Ashoka Pavallian,<br>New-Civil, Bhatar Road,<br>Near Kapadia Health Club,<br>Surat-395001<br><b>[PAN No: AABFO 6118J]</b> | <b>बनाम</b><br>Vs | Income Tax Officer,<br>Ward-1(3)(1), Surat,<br>Room No. 203,<br>Anavil Business Canter<br>Surat Adajan<br>Surat |
| <b>अपीलार्थी/Appellant</b>                                                                                                                            |                   | <b>प्रत्यर्थी /Respondent</b>                                                                                   |

|                                         |                         |
|-----------------------------------------|-------------------------|
| निर्धारिती की ओर से /Assessee by        | Shri Suresh K Kabra, CA |
| राजस्व की ओर से /Revenue by             | Shri Mukesh Jain, Sr-DR |
| अपील पंजीकरण/Appeal instituted on       | 11.06.2024              |
| सुनवाई की तारीख/Date of hearing         | 25.10.2024              |
| उद्घोषणा की तारीख/Date of pronouncement | 12.11.2024              |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld. CIT(A)"] dated 31.05.2024 for assessment year 2017-18, which in turn arises out of assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.12.2019. The assessee has raised the following grounds of appeal:-

*"1. The Ld. CIT(a)-NFAC has erred and was not just and proper on the facts of the case and in law in confirming the addition of Rs.40,00,000/- u/s 69A of the I.T. Act.*

*2.1 The additions confirmed by the Ld. CIT(A)-NFAC may be kindly deleted.*

*2.2 Personal hearing maybe granted.*

*2.3 Any other relief that your honours may deem fit may be granted.*

*3. The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing."*

2. Brief facts of the case are that assessee is a firm engaged in business of job work of paintings of buildings, leasing of plant & machineries and equipment on contract basis. The assessee filed its return of income for assessment year 2017-18 on 20.08.2017 declaring income of Rs.6,46,790/-. The case was selected on the issue of cash deposits of Rs.40,00,000/- in its bank account maintained with Bank of Baroda, during demonetization period. During assessment, Assessing Officer issued show cause notice to furnish the source of cash deposit. The contents of show cause notice is recorded in para.1 of assessment order. In the show cause notice, the assessing Officer recorded that on perusal of cash book, there is several cash withdrawals, however, assessee has shown cash-in-hand of Rs.13,30,282/- as on 01.04.2016, which was increased to Rs.43,88,431/- at the time of demonetization period. The assessee was asked to furnish details regarding total cash deposit in bank from 01.04.2015 to 08.11.2015, total cash deposit from 09.11.2015 to 30.12.2015 and similarly in financial year 2016-17 total cash deposit from 01.4.2016 to 08.11.2016 and 09.11.2016 to 30.12.2016. The Assessing Officer noted that assessee filed its submission but reiterate earlier submission. The assessee stated that cash was increased due to withdrawal. The assessee Office was of the view that cash deposit during financial year and the preceding year has no comparison and that there is increased in cash deposit in financial year 2016-17. The Assessing Officer, accordingly treated the cash deposit of Rs.40,00,000/- as unexplained and added under section 69A of the Act and taxed under section 115BBE of the Act, while passing the assessment order on 21.12.2019.

3. Aggrieved by the additions made in the assessment order, assessee filed appeal before Ld.CIT(A). Before Ld.CIT(A), assessee filed detailed written statement, the assessee stated that during financial year 2016-17, assessee made total withdrawal of Rs.76,37,000/- up to 07.11.2016 and cash balance accumulated as on 07.11.2016 was at Rs.43,88,431/-. The assessee deposited Rs.40,00,000/- between 08.11.2016 to 15.11.2016. The details furnished by assessee about cash withdrawal and cash deposit was compiled / scanned at page 5 to 7 in para-6 of the order of Ld. CIT(A). The Ld.CIT(A) noted that assessee deposited Rs.6,76,000/- and made withdrawal of Rs.76,37,000/-. The Ld. CIT(A) noted that during demonetization, the assessee made withdrawn of small amount of cash, which was utilized by assessee in executing painting work and making payment to labours purchase of colour and other related works. Thus, amount withdrawal in cash was not available for re-deposited in bank. If assessee was not using money already withdrawn, there was no requirement to withdrawal small amount of money again and gain. The money deposited in the bank account is not same amount which was withdrawn by the assessee earlier. The assessee failed to discharge its onus cast upon them to source of cash deposit, during demonetization period. The Assessing Office has given a clear finding in the assessment order that withdrawal are reflected in the books of assessee. The assessee is making general statement that cash deposited are of earlier withdrawal. On the basis of such observation, Ld.CIT(A) upheld the addition made by Assessing Officer. Further aggrieved, the assessee has filed present appeal before Tribunal.

4. I have heard the submissions of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the orders of lower authorities carefully. The Ld. AR for the assessee submits that assessee is a firm and engaged in the business of job work, painting of houses, leasing of equipment of plant and machinery on contract basis. During relevant financial year, assessee has made total withdrawal more than Rs.76,00,000/- which has been accepted by Ld.CIT(A). The nature of business of assessee is labour intensive, wherein assessee has to make payment to labour in connection to day-to-day items of painting and job work of building, which require cash expenditure. For maintenance of plant and machinery cash payment is needed. In the month of November, 2016, all of sudden, currency note of Rs.1000/- and Rs.500/- was demonetized as per policy of Reserve Bank of India as declared by Central Government. The assessee has no option except to deposit currency notes of Rs.1000/- and Rs.500/- at the time of demonetization period. The assessee was having closing balance of Rs.43,88,431/- on the date of demonetization, out of which, Rs.40,00,000/- in the form of Specified Bank Notes (in short 'SBN') was deposited. The assessee fully substantiated the cash deposit by showing sufficient withdrawal. The assessee is maintaining proper books of account. The books of account of assessee was not rejected, except disputing the cash available with assessee. The Ld. AR for the assessee submits that assessee has fully substantiated the availability of cash-in-hand yet to avoid possibility of revenue leakage, a token and reasonable disallowance may be made to avoid long drawn litigation with revenue.

5. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that assessee has not discharged its onus and fully substantiate the cash deposit, assessee failed to prove the opening cash balance as on 01.04.2016 by third party evidence. The assessee is relying self-serving story of cash balance as on 01.04.2016.
6. I have considered the submission of both the parties and have gone through the orders of lower authorities and perused various documents filed on record. I find that Assessing Office made addition of cash deposit during demonetization period by taking view that assessee failed to discharge its onus and has not furnished the comparative cash withdrawal during previous financial year. Before Ld.CIT(A) assessee furnished entire cash book and details of withdrawal during relevant financial year. I find that details of cash withdrawal are extracted in para-6 of the order of LD.CIT(A) wherein assessee has shown total cash withdrawal more than Rs.76,00,000/-. The assessee has also claimed opening cash balance of Rs.13.30,282/- though no third party evidence either in the form of cash-in-hand in ITR or otherwise, is place on record. However, it is a matter of fact that assessee is engaged in business activities, therefore, closing balance, certain cash-in-hand cannot be ruled out. Further, there is no dispute that during relevant financial year, assessee has shown withdrawal more than Rs.76,00,00/-. It is a known that during demonetization period, every businessman or individual was required to deposit SBN with Nationalized Bank or Schedule bank. The assessee claimed that cash deposit was out of cash availability with the assessee. I find that except doubting the cash availability, other expenses either capital or

revenue is not doubted by Assessing Officer nor any adverse material is brought on record. Therefore, considering the overall facts and circumstances of the case, I am of the view that in order to avoid possibility of revenue leakage a token disallowance @ 10% of total deposit cash would be sufficient to avoid the possibility of revenue leakage. Since assessee is engaged in business activities and cash available with the assessee is out of business activities, therefore, it cannot be taxed at the higher rate prescribed under section 115BBE of the Act. The AO is directed to tax the same under normal rate of tax applicable on assessee, for the year under consideration. Thus, the ground of assessee is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in open court on 12 November, 2024.

**Sd/-**  
**(PAWAN SINGH)**  
**[न्यायिक सदस्य JUDICIAL MEMBER]**

सूरत /Surat, Dated: 12/11/2024  
**Dkp Outsourcing Sr.P.S\***

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत