

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.683/Mum/2022
(Assessment Year :2017-18)**

M/s. Jet Freight Logistics Limited 706, C Wing, Pramukh Plaza Cardinal Gracious Road Opp. Holy Family Church Mumbai – 400 099	Vs.	Commissioner of Income Tax Appeal (NFAC)
PAN/GIR No.AABCJ6786G		
(Appellant)	..	(Respondent)

Assessee by	Shri Vimal Punamiya
Revenue by	Shri Ratnakar Shelke
Date of Hearing	07/09/2022
Date of Pronouncement	23/09/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.683/Mum/2022 for A.Y. 2017-18 arises out of the order by the Id. Commissioner of Income Tax (Appeals) NFAC in appeal No.CIT(A) 17, Mumbai/10357/2019-20 dated 24/11/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2019 by the Id. Asst. Commissioner of Income Tax, Circle 10(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we find that there is a delay in filing of appeal by 85 days by assessee before us. We find that the order is passed by the Id. CIT(A) during the Covid Pandemic period and accordingly, in view of the relaxation granted by the Hon'ble Supreme Court, we are inclined to condone the delay of 85 days in filing of appeal by the assessee. Accordingly, the appeal of the assessee is admitted for adjudication.

3. The ground No. 1 & 5 raised by the assessee are general in nature and does not require any specific adjudication.

4. The ground No. 2 raised by the assessee is challenging the action of the Id. CIT(A) in confirming the addition made in the sum of Rs.2,48,87,000/- being Specified Bank Notes deposited in the bank account of the assessee, in the facts and circumstance of the case.

4.1. We have heard rival submissions and perused the materials available on record. We find that the assessee is engaged in the business of freight forwarding for handling perishable, general and time sensitive cargo and handling general and other kinds of cargo. The Id. AO observed that the assessee had credited to the profit and loss account revenue from operations of Rs.216,71,91,519/- and other income of Rs.5,57,018/-, after debiting various expenses, total income of Rs.5,86,67,830/- is declared in the revised return of income filed on 04/11/2017. The Id. AO observed that assessee had deposited a sum of Rs.2,48,87,000/- in Specified Bank Notes (SBN in short) during the period of demonetisation. The Id. AO directed the assessee to respond as to why the cash deposits made in Specified Bank Notes in the bank account of the assessee be brought to tax as unexplained cash credit u/s.68 of the Act and in connection therewith sought copy of cash account with narration of

entries, copy of confirmation of parties, who had advanced monies to the assessee in connection together with their name, address and PAN. The Id. AO also asked the assessee to produce the details in a prescribed tabular form. The details called for by the Id. AO were submitted vide letter dated 25/11/2019 by the assessee together with cash book in the whole year. The assessee prima facie submitted that the entire source of cash deposits of Rs.2,48,87,000/- were met out of cash withdrawals made by the assessee from 01/10/2016 to 08/11/2016 in the sum of Rs.62,49,000/- and cash received from various customers in the sum of Rs.1,86,38,000/-. The assessee also furnished the list of customers from whom cash has been received by it together with their name, address, ledger account, PAN, invoice amount of cash sales, ledger confirmation etc., The assessee also explained in detail the complete modus operandi of its operations and the business model adopted by it before the lower authorities. In respect of cash received from customers, the Id. AO also issued notice u/s.133(6) of the Act to seven customers for independent verification. Out of seven parties, three parties confirmed the payment of cash to the assessee amounting to Rs.79,46,904/- as under:-

(i) Pioneer Trading	-	Rs.20,00,000/-
(ii) Al Nafees Frozen Food Exports Pvt. Ltd.,	-	Rs.41,98,904/-
(iii) Ideal Trading	-	<u>Rs.17,45,000/-</u>
Total		Rs.79,46,904/-
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4.2. The assessee submitted that this constituted 43% of total cash receipts from customers. The assessee also submitted that it is a clearing and forwarding agent having 13 branches situated at Delhi, Bangalore, Kochi, Calicut, Hyderabad, Ahmedabad, Lucknow, Kolkata, Trivendrum,

Mumbai, Mangalore, Goa and Chennai. It was specifically pointed out that assessee assists in sending perishable and time sensitive cargo through air transport. It receives various components for this purpose from its customers such as freight, customs duty, loading and unloading charges, Barai charges etc., which are incidental to the transportation of the cargo apart from earning agency commission from its customers. It was also submitted that freight paid to airlines has a credit period of one month, accordingly, the assessee accords credit of one month in relation to the said charges to its clients. However, assessee receives cash from some of its clients for meeting daily charges for handling their cargo which included loading and unloading, Barai and other ancillary expenses connected to transportation of cargo. It was also pointed out that the cash received for this purpose is expended for incurring the aforesaid expenses, however, consequent to demonetisation the cash collected from customers could not be utilised for the business purposes and remained to be expended at various site offices where this cash was received. Therefore, the same was deposited by the assessee in various bank accounts at different branches and further expended for the very same purpose i.e. incurring of various operational expenses of clients by subsequent withdrawals in cash. The details of various cash deposits made and cash expenses incurred were duly furnished before the Id AO. The assessee submitted the cash book, bank statements and details of the person from whom cash was received together with their name, address, PAN, ledger confirmation etc., These facts are acknowledged by the Id. AO in para 4.4 of his order. The Id. AO states that assessee has merely submitted copy of confirmations from these parties but had not proved the creditworthiness of availability of cash with those persons by documentary evidences. Thereafter, he chose to issue notice u/s.133(6) of the Act to seven parties out of which three directly responded by

furnishing the details. However, the Id. AO says that even in respect of parties who had responded that the ledgers filed by them were running into number of pages and incapable of item wise verification. Accordingly, he rejected all the documentary evidences submitted by the assessee and proceeded to tax the entire cash deposits made in Specified Bank Notes during demonetisation period in the sum of Rs.2,48,87,000/- as unexplained cash credit u/s.68 of the Act and levied tax in accordance with the provisions of Section 115BBE of the Act for the same. This action of the Id. AO was upheld by the Id. CIT(A).

4.3. At the outset, we find that assessee has furnished the following documents before the lower authorities to explain the nature and source of cash deposits made in Specified Bank Notes in its bank account:-

- (a) Cash book for the whole year;
- (b) Bank statements for the whole year;
- (c) Bank statements clearly evidenced withdrawal of cash made by the assessee prior to 08/11/2016 (i.e. the day on which demonetisation was announced by the Government);
- (d) Details of cash received from customers by the assessee in regular course of its business for the purpose of handling transportation of cargo on behalf of customers;
- (e) Name and address of the customers, PAN of the customers, Ledger confirmation of the customers of having made the payment to the assessee in cash;
- (f) Cash deposits made prior to 08/11/2016.

4.4. The Id. AR before us submitted the business model adopted by the assessee regarding the process of handling shipment and reasons for cash withdrawal as under:-

i. First, the assessee book space with Airlines before 24 hours for subject destination with description of Commodity.

ii. Then negotiate Rate from different Airlines & based on buy rate, assessee take confirmation for sell rate from Customer.

iii. After final confirmation is received from Exporter for execution of shipment, assessee block space with respective Airline base on Export invoice copy & packing List.

iv. Once customer shipment has been approved, assessee have to do AD code registration of Exporter with Approval of custom officer.

v. The assessee have to arrange Transportation service from exporter warehouse to cargo terminal, where assessee have to pay cash to Truck Driver for Diesel Expenses & trip Expenses of the Driver.

vi. To transport cargo from customer warehouse, assessee have to pay Mathadi workers (Hamal or Loader) to load cargo in vehicle. Mathadi workers (Hamal or Loader), take cash payment per truck which includes Loading & Varai Charges (Unloading Charges). vii. Once cargo reach at cargo terminal, assessee have to unload cargo at our warehouse. For that, assessee have to pay unloading charges in cash per truck & plan other activity related to shipment.

- GSP or COO certificate is mandatory for US countries.
- Phyto certificate required to meet phytosanitary import requirement.
- Fumigation for specific shipment.
- Once fumigation done than packing as per airlines & shipment requirement. (Packing include Shrink wrapping or wooden box or palletization)
- After packing cargo, again load the same in vehicle, with the help of Mathadi worker (Hamal or Loader), & their Loading charges, we have to pay in cash per truck.
- Once packing done than assessee have to do labelling to all boxes.

viii. Once cargo loaded in vehicle from warehouse, it will move to cargo terminal as per schedule of departure. Assessee have to pay cash to Local Transporter cash on delivery (COD) basis.

ix. Once we received cargo at Terminal, assessee have to gate in cargo after deducting Gate pass charges from our Pre-Deposit Account.

x. After Gate in, cargo will move to airline shade to get unload. Assessee clearance staff will arrange loader to unload cargo in airline shade. Assessee have to pay cash to Unloader.

xi. Once cargo get unload in airline shade our clearance staff will start process of documentation to clear the cargo. It includes following activities:

- CMC Expenses for get entry in custom computer
- Approval of DBK
- Examination expenses
- Clearing & Handling expenses
- Phyto Certification

Assessee have to pay Cash for Clearance & Documentation charges

xii. Once documentation part gets over, Assessee need to take approval & inspection from custom officer for clearance.

xiii. Once we received approval from custom officer to go ahead, Airline release carting order to load cargo at Aero plane than the assessee must submit handover sets to Airline authority.

4.5. From the above process of handling shipment on behalf of the customers, it is evident that assessee is in continuous need for payment of cash at various point of time and hence, assessee had to withdraw cash in order to satisfy its business requirements. Moreover, the assessee has got 9 branches all over India and such cash requirement would have to be met for meeting day to day expenditure. We find from the perusal of the bank statements for the whole year and the cash book for the whole year which is already forming part of records, the assessee has regularly withdrawn cash from its bank account throughout the year and

has been making deposits in bank throughout the year in the bank account. Since remaining balance of the amounts withdrawn from bank after meeting its business expenses that were lying with the assessee had lost its validity of being classified as a legal tender pursuant to announcement of demonetisation policy by the Government of India, the assessee had no choice but to deposit the cash available with it both in the form of cash surplus withdrawals and also the cash received from customers in the designated bank account in Specified Bank Notes during the period 09/11/2016 to 31/12/2016. All cash that has been deposited in Specified Bank Notes during the demonetisation period i.e.09/11/2016 to 31/12/2016 cannot be classified as unexplained income of the assessee. What is to be seen is as to whether the assessee had sufficient cash balance in its books for making the said deposits in the bank account. In the instant case, we find that assessee had sufficient cash balance in its books which is evident from the cash book filed by the Id. AR before us. From the perusal of the said cash book, we find that there is no negative cash balance on any day during previous year much less prior to the demonetisation period. Moreover, the Id. AR before us submitted that assessee in order to meet its business obligations has been regularly withdrawing cash in earlier years also and during the year as under:-

A.Y.2015-16	-	Rs.4,29,62,480/-
A.Y.2016-17	-	Rs.5,11,58,987/-
A.Y.2017-18	-	Rs.4,06,62,740/-

4.6. We further find that assessee had furnished the entire details of cash received from customers containing the name and address of the customers, PAN, invoice amount, invoice details, ledger confirmation etc., before the lower authorities and further had submitted that the cash has

been received from 20 parties by the assessee during the year. Out of these parties, 11 parties were selected by the Id. AO for verifying the genuineness of the transaction. Three parties directly appeared before the Id. AO and filed the replies. Eight parties furnished the replies to the assessee and those replies were also submitted by the assessee before the Id. AO. These facts were not controverted by the Revenue before us by bringing any contrary evidences. The Id. AO had not brought any cogent evidence on record to disbelieve the details furnished by the parties and the assessee. Moreover, the banks had fixed the maximum limit of making deposit in cash up to Rs.5,00,000/- in a day during the demonetization period commencing from 09/11/2016 to 31/12/2016. This had mandated the assessee to make frequent cash deposits less than Rs.5,00,000/- during the period 09/11/2016 to 31/12/2016. Accordingly, we hold that the entire cash deposits made by the assessee during the period 09/11/2016 to 31/12/2016 in Specified Bank Notes in the sum of Rs.2,48,87,000 stood properly explained by the availability of cash balance in its books and hence, no addition thereon could be made u/s.68 of the Act. We direct the Id. AO to delete the said addition. Accordingly, the ground No.2 raised by the assessee is allowed.

5. The ground No.3 raised by the assessee is challenging the confirmation of disallowance of depreciation of immovable property.

5.1. We have heard rival submissions and perused the materials available on record. The Id. AO from the perusal of the return of the assessee together with the financial statements observed that there was an addition to the block of building amounting to Rs.5,67,30,000/- during the year under consideration. The assessee vide submission dated 27/11/2019 filed a copy of agreement in respect of purchase of the said

property situated at 702, Pramukh Plaza. This agreement was entered for purchase of property on 31/03/2017. The Id.AO vide notice u/s.142(1) of the Act dated 07/12/2019 asked the assessee to explain why depreciation amounting to Rs.28,36,500/- on the said immovable property should not be disallowed as only agreement for purchase of property was entered into and only part payment was made during the year. In response to the said notice, the assessee explained that it had entered into an agreement for purchase of property as on 31/03/2017 and the property was registered in the name of the company on 06/04/2017 i.e. within six days from the agreement date. The assessee already had a physical possession of the property as the same property was taken on rent by it immediately prior to the date of purchase. As per the agreement, the assessee company shall continue to remain in physical possession of the property and the vendor was also to deliver the juridical possession of the property to assessee company on the execution of the said agreement on 31/03/2017. The assessee relied on Section 23 of the Indian Registration Act, 1908, which permits registration of documents within a period of four months of its execution as well as Section 47 of the Indian Registration Act, 1908, which clarifies that a registered document shall operate from the time which it would have commenced to operate if no registration thereof has been required or made, and not from the time of its registration. Accordingly, it was submitted by the assessee that it had become the beneficial owner of the property w.e.f. the date of agreement i.e.31/03/2017 itself and not from the date of Registration i.e. 06/04/2017. In view of these, it was submitted that assessee was entitled for claim of depreciation u/s.32 of the Act. The assessee submitted copy of leave and license agreement before the lower authorities together with the copy of agreement dated 31/03/2017 and copy of registration document dated 06/04/2017. The Id. AO however, observed that

assessee had made majority of the payment for the purchase of the property only in the next financial year relevant to A.Y.2018-19 and registration of sale deed also had happened in the A.Y.2018-19. Accordingly, he disallowed the depreciation u/s.32 of the Act in the sum of Rs.28,36,500/- claimed in this year. This action of the Id. AO was upheld by the Id. CIT(A).

5.2. The aforesaid primary facts narrated hereinabove are not in dispute and hence, they are not reiterated herein for the sake of brevity. It is a fact that assessee was in possession of the very same property on leave and license basis and was paying rent for the said property. The same property which was on rent was purchased by the assessee on 31/03/2017 pursuant to entering of agreement dated 31/03/2017 by making part payment. Full payment was made in next Financial Year and registration was completed on 06/04/2017 i.e. within six days from the date of execution agreement. In this regard, in our considered opinion, the provisions of Section 23 & 47 of the Indian Registration Act, 1908, would come to the rescue of the assessee. For the sake of convenience, the said provisions are reproduced herein below:-

Section 23 in The Registration Act, 1908

“23. Time for presenting documents.—Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution: Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.”

Section 47 in The Registration Act, 1908

“47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

5.3. From the perusal of the aforesaid provisions it could be seen that the sale deed has been registered in the name of the assessee before six months from the date of execution of the agreement, hence, effectively the ownership relates back to the date of agreement to the assessee. It is not in dispute that assessee was enjoying the physical possession of the property even prior to the date of agreement as a licensor. Pursuant to entering the agreement the assessee became the beneficial owner of the said property. In this regard, we have no hesitation in placing reliance on the decision of the Hon'ble Supreme Court in the case of Mysore Minerals Ltd., vs. CIT reported in 239 ITR 775 wherein it was held that when assessee was in possession of the property exercising and having right to use and occupy property he would be construed as the owner of the building though a formal deed of title could not have been executed and registered by taking possession of the property and making part payment thereon. It was held by the Hon'ble Supreme Court that depreciation u/s.32 of the Act would be eligible to the assessee. Respectfully following the provisions of the Indian Registration Act referred to supra and the decision of the Hon'ble Supreme Court supra, the ground No.3 raised by the assessee is allowed.

6. The ground No.4 raised by the assessee is challenging the confirmation of disallowance of donation paid u/s.80G of the Act.

6.1. We have heard rival submissions and perused the materials available on record. We find that the assessee had debited a sum of Rs.84,315/- towards donation in its profit and loss account. The same was disallowed by the Id. AO as receipts were not submitted by the assessee. This action of the Id. AO was upheld by the Id. CIT(A). We find that

assessee even before the Id. AO had only sought for grant of deduction u/s.80G for Rs.65,000/- in respect of donations paid to The Saved Pearl Foundation on 10/10/2016 and 24/05/2016 amounting to Rs.32,500/- each. We find that the receipts for these two donations are enclosed in pages 328 and 329 of the paper book. Hence, we direct the Id. AO to verify the veracity of these two receipts and grant deduction u/s.80G of the Act to the assessee in accordance with law. In any case for the remaining sum of Rs.19,315/-, the assessee is not seeking any relief u/s.80G. Accordingly, the ground No.4 raised by the assessee is partly allowed for statistical purposes.

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

Order pronounced on 23/09/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/09/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai