

**THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 1083/KOL/2023
Assessment Year: 2017-2018**

***Babusona Mondal,.....Appellant
Chupi, Purbasthali,
Bardhaman-713513, West Bengal
[PAN:AMLPM4811A]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Circle-1, Bardhaman,
Aayakar Bhawan & Annexe,
Court Compound,
Kachari Road, Burdwan-713101, W.B.***

Appearances by:

*Shri Manoj Kataruka, A.R., appeared on behalf of the
assessee*

*Shri Amuldeep Kaur, JCIT, appeared on behalf of the
Revenue*

Date of concluding the hearing: January 23, 2024

Date of pronouncing the order: March 18, 2024

O R D E R

Per Sanjay Garg, Judicial Member:-

The present appeal has been preferred by the assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 7th September, 2023 for A.Y. 2017-18.

2. The assessee in this appeal has taken the following grounds:-

(1) That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the AO of Rs.51,26,000/- on account of unaccounted money u/s 69A of the Act is contrary to the material evidences of record and the addition is arbitrary, excessive and illegal.

(2) That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the addition made by the AO of Rs.43,91,729/- on account of addition to gross profit is contrary to the material evidences of record and the addition is arbitrary, excessive and illegal.

(3) That the order of the Ld. CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal

(4) That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing.

3. The assessee vide Ground No. 1 has assailed the order of ld. CIT(Appeals) in confirming the addition of Rs.51,26,000/- on account of cash deposits in the Bank account during demonetization period.

4. Brief facts relating to the issue are that the ld. Assessing Officer noted that the assessee had deposited substantial cash in his Bank account which included demonetized old currency. He observed that the total deposit in his bank account during demonetization period i.e. from 09.11.2016 to 30.12.2016 was Rs.2,07,11,500/-, out of which the amount of Rs.91,26,000/- was in old currency deposited between the period 10.11.2016 to 17.11.2016. On being asked to explain in this respect, the assessee

explained that the source of cash receipts was from the sale of foreign liquor and country liquor. That the business of the assessee is of sale of liquor and in which most of the sales were in cash, which included day to day withdrawals of cash out of deposits also. That the entire withdrawal and deposits of cash duly tallied with the purchase and sales of the assessee. The books of account of the assessee were audited and there was no discrepancy relating to the purchase, sales and stock-in-trade etc. However, the Id. Assessing Officer observed that the assessee had made regular cash deposits on day-to-day basis in the bank account of the assessee. That the old currency was banned from 09.11.2016 and the assessee had deposited cash on 07.11.2016 to the bank account. Therefore, the assessee was not having opening balance of Rs.91,26,000/- in old currency. He further noted that considering annual sales of the assessee at Rs.15.51 crores, daily average sales come out to be Rs.4,24,931/- only. He, assuming daily sales of the assessee at Rs.5,00,000/-, gave the benefit of Rs.5,00,000/- as opening balance deposited in other specified bank accounts and made the addition of Rs.86,25,000/- as unexplained income of the assessee.

5. In appeal, the Id. CIT(Appeals) observed that the Id. Assessing Officer has made addition by taking the average sales at Rs.5,00,000/-. Since the deposit period was taken from 10.11.2016 to 17.11.2016, he, therefore, gave the benefit to the assessee taking the average sales of Rs.5,00,000/- per day for the aforesaid period and reduced Rs.40,00,000/- out of the total

deposits of Rs.91,26,000/- and restricted the addition to the extent of Rs.51,26,000/-.

6. Before us, ld. Counsel for the assessee has submitted that the ld. Assessing Officer has taken the wrong figures of deposit relating to the old specified currency notes. That, in fact, the total cash deposit during the demonetization period from 09.11.2016 to 30.12.2016 was Rs.2,07,11,500/-. That the total cash deposit during the period between 10.11.2016 to 17.11.2016 considered by the ld. Assessing Officer was at Rs.91,26,000/-, out of which the deposit in old currency notes was about Rs.10 lakhs only, which was out of opening balance. That the ld. Assessing Officer mistook that the entire deposit during the period from 10.11.2016 to 17.11.2016 as in old currency notes. Ld. Counsel has further referred to page no. 35 of the paper book to submit that it was wrong to calculate the daily average sales on the basis of total turnover. That the total sales varied from month to month. Ld. Counsel has referred to a chart to submit the total bank deposits during the month of April were more than during the month of November, which included the demonetization period. That the ld. Assessing Officer has not disputed the purchase and sales made by the assessee.

7. Ld. D.R., on the other hand, has relied on the finding of ld. CIT(Appeals).

8. We note that the addition on account of cash deposits during the demonetization period in this case has been made on assumptions and presumptions. The assessee is engaged in the business of sale of liquor and total sales amount used to be regularly deposited in his bank account on daily basis during the entire year. It is not the case that the cash was deposited only during demonetization period. The assessee has a turnover of Rs.15.51 crores and during different months, the cash sale does not remain the same. In some months, cash sales were more and in some months less. The case of the assessee is that the entire deposit during the period from 10.11.2016 to 17.11.2016 was of Rs.91.26 lakhs, out of which the demonetization currency was about Rs.10 lakhs only. The ld. Counsel in this respect has referred to the deposit slips and the statement of Bank accounts. There is no document on the file to show that the entire deposits made by the assessee during the period 10.11.2016 to 17.11.2016 were in demonetization currency. The deposits tallied with the cash sales in the bank accounts of the assessee. The accounts of the assessee were duly audited. There is no mismatch of the purchases, sales and stock-in-trade. Therefore, the action of the ld. Assessing Officer in taking the average sales at Rs.5,00,000/- per day and adding back the remaining amount is not justified. The addition made/confirmed by the lower authorities on this account is ordered to be deleted.

9. Vide Ground No. 2, the assessee has assailed the order of ld. CIT(Appeals) in confirming the addition of Rs.43,91,729/- on

account of addition to gross profit. The ld. Assessing Officer taking note of the few purchase bills noted that the difference between the purchase price and maximum retail price was from 6% to 8%, whereas, the assessee has shown its gross profit @2.16%. The ld. Assessing Officer took the average gross profit of the assessee at 5% and made the addition of the amount of difference at Rs.43,91,729/-. The ld. CIT(Appeals) confirmed the addition as made by the ld. Assessing Officer.

10. Before us, ld. Counsel for the assessee has submitted that the ld. Assessing Officer misconstrued the word "MRP" mentioned in the invoices. That in case of liquor, it is not minimum retail price, rather 'MRP' means maximum retail price. That it is not always that the assessee was selling liquor at the maximum retail price. That the books of account of the assessee were duly audited and the ld. Assessing Officer has not rejected the books of account. There was no evidence of out of books sales. The gross profit of the assessee for A.Y. 2014-15 was 1.29% and for A.Y. 2013-14 was 1.50%, whereas, for the year under consideration, the assessee's gross profit was at 2.17%, which was higher than the earlier years. That the ld. Assessing Officer misconstrued some bills by taking note of the MRP value. However, the ld. Assessing Officer has not pointed out any instance of sale that was out of books of account. The purchase, sale and stock duly tallied. The ld. D.R. could not dispute the aforesaid submissions made by the ld. A.R. Therefore, the action of the ld. Assessing Officer in taking higher gross profit on estimation basis cannot be held to be justified. The addition

made by the Id. Assessing Officer on this account is also ordered to be deleted.

11. Grounds No. 3 and 4 are general in nature, which do not require any adjudication.

12. In view of our finding given above, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 18/03/2024.

Sd/-

Sd/-

**(Girish Agrawal)
Accountant Member**

**(Sanjay Garg)
Judicial Member**

Kolkata, the 18th day of March, 2024

*Copies to :(1) Babusona Mondal,
Chupi, Purbasthali,
Bardhaman-713513, West Bengal*

*(2) Deputy Commissioner of Income Tax,
Circle-1, Bardhaman,
Aayakar Bhawan & Annexe,
Court Compound,
Kachari Road, Burdwan-713101, W.B.*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.