आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.14/RPR/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Neeraj Camellia Private Limited
11/146, Malviya Road, Near Chikni Mandir,
Raipur (C.G.)-492 001
PAN : AABCN6995K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

……प्रत्यर्थी / Respondent

Assessee by	:	Shri R.B Doshi, CA
Revenue by	:	Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing	: 21.02.2024
घोषणा की तारीख / Date of Pronouncement	: 18.03.2024

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 20.11.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 29.12.2019 for the assessment year 2017-18. The assessee company has assailed the impugned order on the following grounds of appeal:

> "1. Ld. CIT(A) erred in confirming addition of Rs.36,57,000/- made by A.O, being 14% of net cash deposits made during demonetization, holding the sales have been backdated. Ld. CIT(A) erred in upholding action of A.O in invoking Section 145(3) without appreciating the facts of the case properly and judiciously. Conclusion drawn by the A.O & Ld. CIT(A) and consequent addition is arbitrary, baseless, ill-founded and not justified.
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> 2. Without prejudice to ground no.1, Ld. CIT(A) erred in confirming addition of Rs.36,57,000/- made by A.O on the basis of entries in regular books, after having rejected the same books.
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> 3. The appellant reserves the right to amend, modify or add any of the ground/s of appeal."

2. Succinctly stated, the assessee company, which is engaged in the business of wholesale and retail trading of gold, diamond, and silver ornaments, had e-filed its return of income for A.Y.2017-18 on 31.10.2017 declaring a total income of Rs.2,61,38,530/-. The return of income filed by the assessee company was processed as such u/s. 143(1) of the Act. Subsequently, the case of the assessee

company was selected for limited scrutiny under CASS for verifying the cash deposits made in its bank accounts during the demonetization period.

3. During the course of the assessment proceedings, on verification of books of accounts and bank statements, it was observed by the A.O that the assessee company had from 09.11.2016 to 31.12.2016, i.e. during the demonetization period made cash deposits of Rs.3,06,32,000/- out of which Rs.2,71,30,000/- was in Specified Bank Notes (SBN). On being asked to provide the source of the cash deposits by the A.O., it was submitted by the assessee company that the aforesaid amounts were either sourced out of the cash sale proceeds or from payments received from the debtors during the pre-demonetization period. The A.O., observing that the assessee company had shown huge cash receipts in the month of October, 2016 and the cash deposits in its bank account were not commensurate with its cash sales, thus, did not accept its explanation and rejected the books of accounts u/s. 145(3) of the Act.

4. The A.O based on his multi-facet contentions was of the view that the cash deposits of Rs. 2.71 crores (approx.) made by the assessee company in its bank accounts in demonetized currency during October, 2016 and November, 2016 were though sourced from the sales carried out by it during the demonetization period, but were falsely disclosed in its books of accounts as sales carried out during the pre-demonetization period, i.e., 01.10.2016 to 08.11.2016. Accordingly, the A.O. held a firm conviction that the assessee company had antedated its sales that were

carried out during the demonetization period. The A.O drawing support from certain newspaper clippings and status reports prepared by the Income Tax Department on "Operation Clean Money" in the month of May, 2017, was of the view that the assessee company would have made an abnormal profit on the sales that were though carried out during demonetization period but were disclosed in its books as sales for the pre-demonetization period. Referring to the fact that the majority of jewelers had offered 25% to 30% of their total cash deposits under IDS and PMGKY scheme and paid taxes as per the scheme, the A.O held a conviction that the assessee company would have made a profit of 25% on its sales of Rs. 2.71 crores (supra) carried out during the demonetization period. Observing, that the assessee company had already disclosed NP @11% on the subject sales under consideration, the A.O after reducing from the amount of cash deposits of Rs. 2.71 crore (supra) the cash in hand of Rs.10,10,565/- that was available with the assessee company on 01.10.2019 (i.e date by which the Sales Tax Return of past quarter had been filed by the assessee company), thus, restricted the addition in its hands to 14% [25% (-) 11%] of the balance amount of Rs.2,61,21,435/- [Rs. 2,71,32,000/- (-) Rs. 10,10,565/-] and worked out a consequential addition towards suppressed profit at Rs.37,98,480/-. Accordingly, the A.O. backed by his aforesaid deliberations, vide his order passed u/s. 143(3) dated 29.12.2019 determined the income of the assessee company at Rs.2,97,95,530/-.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

> "5. DECISIONS & REASONS:
>
> The appellant in its grounds of appeal has assailed the AO in making the addition of Rs.36,57,000/- being cash deposit during demonetization period. The AO in the assessment order noted that assessee was issued notice u/s.142(1) of the Act. Assessee responded after considering the submissions made and based on the facts of the case. The AO hereby considering all the fact, the addition of Rs. 36,57,000/- i.e.,14% of Rs. 2,71,32,000/- i.e., 14% of Rs. 2,71,32,000/- (-) Rs. 10,10,565/- (cash in hand as on 01.10.2019). The conduct of the appellant continued in the appellate proceedings and no submission was field to support its grounds of appeal.
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> 5.1 It is pertinent that in order to decide this appeal in a timely manner a number of notices/communications through ITBA portal were sent to the appellant, viz. Communications dated 27.01.2021, 16.09.2022, 17.04.2023 and 17.10.2023. However, there evidently has been no response from the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant's compliance or rather lack of it, the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance/non-prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis documentation available on record. As evidently from the above, this appeal is liable to be dismissed in-limine in terms of the ratio of the judgements of the Hon'ble Apex Court and the various High Courts including the Hon'ble Apex Court which held in CIT v. B. N. Bhattacharjee and Another (10 CTR 354).
>
> 5.2 It is pertinent to add here that laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus non dormientibus jura subveniunt". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligent and careful plaintiff is favoured and prejudicial of him who is careless. Viewed thus, it is presumed that the appellant has no further cogent reasoning or/and evidence to substantiate the grounds taken in this impugned appeal. It is trite that the onus is on person making the claim, and the primary responsibility/onus/burden for proving the claim made L before the tax authorities (Assessing Officers/Appellate Authorities) lies with the

assessee/appellant. In the present case, the appellant has not been able to even discharge the primary onus/burden statutorily & judicially cast upon him to substantiate the claims made in the grounds of appeal in spite of adequate time and opportunities given as brought out in the foregoing paras. The AO in the assessment order noted that

5.3 It is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments/averments, constraining me to, therefore, go through the extremely brief non-speaking submission appearing in the grounds of appeal and statement of facts filed along with the impugned appeal to decide on the merits while adjudicating the same. But the narrative submission/contention made vide the statement of facts/grounds of appeal is by and large on the very same made at the time of instant assessment which the AO after considering, has duly rejected or found without much merit leading him/her to add the same i.e., the disallowance/additions made in the said assessment order and enumerated in the impugned grounds against which I am constrained to concur with the AO's findings of fact and decisions thereof, more particularly in the absence of any meaningful and worthwhile submissions/documentations even during the instant appellate proceedings in this case to counter effectively the position adopted by the AO on the concerned issues and reduced in writing in the assessment order.

5.3.1 The merit of the case is also examined irrespective of the fact that the appellant continued to remain non-compliant in the appellate proceedings. The AO in the assessment order compared the financials of the A.Y. 2017-18 & 2016-17 and found that though the GP was in the range of 14.92% and 12.61% respectively while the NP had a huge variation i.e., 11.18% and 1.65% respectively, which is not the case in the gold this variation has to be seen in the light of the demonetization taken place during the impugned A.Y. And after examining the facts and issues of the case the AO rejected the books of account and estimated the profit by marking up another 14% over and above the declared NP of 11% and making the commensurate addition. The action of the AO is judicious one and I find no infirmity in the action of the AO in making addition Rs. 36,57,000/- of the Act to the income of the appellant: In this view of the matter, the decision of the AO is upheld. Consequently, the Ground of appeal are dismissed.

5.4 Before parting, it is trite that an appellate authority is essentially called upon to balance the two sides of an argument presented before him as held in Nirmal Singh and Others of the Hon'ble Punjab and Haryana High Court [Cr No. 3791 of 2013 (O&M) dated 01.05.2014] and in the absence of any reasonable, cogent and valid arguments/contentions advanced by the appellant in the instant appeal to counter the AO's decision as contained in the assessment order, as mentioned earlier, the additions/disallowances made by the AO is sustained in terms of the observations herein-above.

6. In the result, the appeal of the appellant is dismissed."

6. The assessee company being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. As observed by us hereinabove, the assessee company, had during the demonetization period, i.e. 09.11.2016 to 31.12.2016 made cash deposits of Rs.3,06,32,000/- in its bank accounts. Out of the aforesaid amount, Rs.2,71,30,000/- of cash deposits were made in Specified Bank Notes (SBN), i.e. Old Currency Notes. Observing, that the assessee company had shown substantially high sales in the months of October and November, 2016, the A.O. had serious doubts as regards the authenticity of the said sale transactions. Also, it was observed by the A.O. that though the assessee company as a matter of a consistent practice would regularly deposit cash in its bank accounts on a day-to-day basis, but during the aforesaid period there was a departure from the said practice. The A.O, observed, that while for the cash deposits trail up to September, 2016 revealed that the assessee company had deposited almost the entire amount of its cash sales in its bank accounts within 1 or 2 days, but there were no justifiable reasons as to why it had retained with it a substantial amount of cash in hand during the pre-demonetization

period and deposited the same during the period. Although it was the claim of the assessee company that the cash in hand available with it during the pre-demonetization period, i.e. in the months of October and November, 2016 was sourced out of the cash sales carried out during the said period but the same did not find favor with the A.O. The A.O was of the view that SBNs of Rs.2,71,30,000/- (supra) that was claimed by the assessee company to have been sourced out of the sale proceeds carried out during the pre-demonetization period was, in fact, out of the sales carried out by it during the demonetization period, i.e. 09.11.2016 to 31.12.2016. After referring to certain media clippings and the modus operandi that was adopted by the jewelers to facilitate the laundering of unaccounted cash of their customers during the demonetization period, the A.O, as observed by us hereinabove, held the cash deposits of Rs.2,71,30,000/- in SBN's (supra) made by the assessee company in its bank accounts as having been sourced from the sales proceeds garnered during the demonetization period. After so concluding, the A.O., further observed, that the assessee company would have carried out the aforesaid cash sales of Rs.2,71,30,000/- (in SBNs) at an abnormally high profit, which was taken by him on a presumptive basis at 25%. Accordingly, the A.O after taking cognizance of the net profit that was already disclosed by the assessee company on the aforesaid subject sales and also, the cash in hand of Rs.10,10,565/- that was available with it on 01.10.2019 (supra), had worked out an addition of Rs. 36,57,000/- in its hands.

9. At the threshold, we shall first deal with the sustainability of the rejection of the books of account of the assessee company u/s. 145(3) of the Act by the A.O. As it is a matter of an admitted fact, that the adverse inferences drawn by the A.O regarding the authenticity of the sale transactions of the assessee company of Rs.2,71,30,000/- (supra), i.e. by dubbing the same as sales carried out against SBNs during the demonetization period, is not supported by any evidence, but is based on a general presumption, i.e reference to certain media clippings and the modus-operandi that was adopted by some jewelers who during the demonetization period had indulged in laundering the ill-gotten money of their customers, therefore, we are unable to persuade ourselves to concur with the same. As the rejection of the books of account of the assessee u/s. 145(3) of the Act pre-supposes satisfaction of either of the two conditions contemplated under the said statutory provision, viz. (i) dissatisfaction of the A.O as regards the correctness and completeness of the accounts of the assessee; or (ii) failure on the part of the assessee in computing its income as per system of accounting regularly employed by him, existence of neither of which, had been proved in the case of the assessee company before us, therefore, rejection of its books results by the A.O cannot be approved.

10. Apropos the observation of the A.O as regards the substantial amount of cash deposits of Rs. 3,06,32,000/- (supra) made by the assessee company in its bank accounts in SBNs during the demonetization period, i.e. 09.11.2016 to 31.12.2016, we may herein observe that though at the first blush, the same appeared to be very

convincing, but a careful perusal of the facts reveal that the cash deposits made by the assessee during the demonetization period, i.e. from 09.11.2016 to 31.12.2016 is very much in conformity with those made during the same period in the immediately preceding year, i.e. 08.11.2015 to 31.12.2015. We, say so, for the reason that as per the details filed by the assessee company, it had during the demonetization period, i.e. 09.11.2016 to 31.12.2016 made cash deposits in its bank account of Rs.3,06,32,000/- as in comparison to cash deposits of 4.88 crore (approx.) made during the same period in the immediately preceding year, i.e. 08.11.2015 to 31.12.2015. Apart from that, we also find substance in the contention of the Ld. AR that the substantial cash deposits in the bank accounts of the assessee company during the pre-demonetization period, i.e. 08.11.2016 to 31.12.2016 was also for the reason that there was a steep rise in its sales in the month of October, 2016 due to festival of Diwali on 30.10.2016. On a perusal of the details provided by the Ld. AR, we find that as in the past the sales of the assessee company in the month of the festival of Diwali witnessed a manifold increase in comparison to those of the preceding months, as under:

Particulars	FY 2015-16	FY 2016-17
Date of Diwali	11/11/2015	30/10/2016
Sale effected in month of Diwali	3,24,30,368/-	2,79,36,125/-
Sale effected in immediately preceding month	80,97,398/-	49,57,094/-

11. At this stage, we may herein observe, that the assessee company on 15.11.2016, i.e. during the demonetization period, was subjected to survey proceedings u/s. 133A of the Act by the Investigating Wing of the Income Tax Department, Raipur. It was submitted by the Ld. AR that the survey officials had in the course of the survey proceedings verified the stock and cash which were found to be in order. Carrying his contention further, the Ld. AR submitted that as no infirmity had emerged either as regards the cash in hand or stock found available in the course of survey proceedings, therefore, the said fact further fortified the factum of availability of cash in hand with the assessee company out of sale proceeds carried out during the pre-demonetization period. Also, we find substance in the claim of the Ld. AR that no material had been placed on record by the department, which would reveal that the subject sales were not carried out by the assessee company during the pre-demonetization period, i.e, as disclosed in its books of accounts, but were made during the demonetization period. Also, as stated by the Ld. A.R., and rightly so, there is even otherwise no basis for the A.O. to have inferred that the assessee company had carried out the subject sales at an abnormally high profit of 25%.

12. Be that as it may, we are unable to comprehend that as to on what basis, the A.O. had presumed a profit element (Net Profit) of 25% on the subject sales. In our view, both the assumptions of the A.O, viz. (i) that the sales in question were antedated, i.e., though disclosed by the assessee as having been carried out during

the pre-demonetization period, but were carried out by the assessee company in lieu of SBN's during the demonetization period; and (ii) earning of the super profit by the assessee company on the subject disclosed sales of Rs.2.37 crores (approx.) in SBN's, are merely based on mere suspicion, assumptions, presumptions, surmises, and conjecture without any material proving the same.

13. Although the A.O had drawn support from certain media clippings and status reports of the Income Tax Department on "Operation Clean Money", and also the fact that certain jewelers had opted for IDS and PMGKY scheme and had offered 25% to 40% of their total cash deposits as undisclosed income, but the said observation, on a standalone basis, in our view, cannot justify the drawing of adverse inferences and the consequential impugned addition in the hands of the assessee company.

14. Backed by our aforesaid deliberations, as we are unable to fathom the very basis, on which, the duly disclosed sales of the assessee company had been related by the A.O to the demonetization period, i.e. 09.11.2016 to 31.12.2016; and also, the presumption drawn by him regarding earning of super profit of 25% on the subject sales, thus, are unable to persuade ourselves to subscribe to the view taken by the lower authorities. Accordingly, we set aside the order of the CIT(Appeals), and vacate the addition of Rs. 36,57,000/- made by the A.O.

15. In the result, the appeal of the assessee company is allowed in terms of the aforesaid observations.

Order pronounced in open court on 18th day of March, 2024.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 18th March, 2024.
***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.