

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1204/KOL/2023
Assessment Year: 2017-2018**

***Subhojit Paul,.....Appellant
Begampur New Railway Station,
Chanditala, Begampur,
Hooghly-712306, West Bengal
[PAN:AWQPP6333B]***

-Vs.-

***Assistant Commissioner of Income Tax,.....Respondent
Circle-23(1), Hooghly,
Khadina More, Station Road,
Chinsurah-712101, West Bengal***

Appearances by:

*Shri S.K. Kamaluddin, FCA, appeared on behalf of the
assessee*

*Shri B.K. Singh, JCIT, Sr. D.R. appeared on behalf of the
Revenue*

Date of concluding the hearing : March 18, 2024

Date of pronouncing the order : June 18, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 10th October, 2023 passed for assessment year 2017-18.

2. The grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the addition of Rs.40,36,676/- out of the total addition of Rs.99,32,750/- made by the ld. Assessing Officer on account of unexplained cash credit in the accounts of the assessee.

3. Brief facts of the case are that the assessee has filed his return of income on 19.07.2017 declaring total income at Rs.16,29,310/-. This return was revised and the income was declared at Rs.16,31,710/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. The ld. Assessing Officer has passed the assessment order under section 143(3) on 13th November, 2019. The ld. Assessing Officer has made the addition of Rs.99,32,750/- on account of unexplained cash credits deposited in the various Bank accounts of the assessee. Dissatisfied with this addition, the assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) has partly allowed the appeal of the assessee and confirmed the addition of Rs.40,36,676/-. The ld. CIT(Appeals) has reduced the addition of Rs.58,96,074/- from the total addition made by the ld. Assessing Officer.

4. With the assistance of ld. Representatives, we have gone through the record carefully. A perusal of the record would indicate that the assessee has filed written submission before the ld.

CIT(Appeals), which exhibits the complete analysis of the issue and we deem it appropriate to take note of such submission for appreciating the controversy involved therein. Such submission reads as under:-

“5.2. During appellate proceedings, the appellant has submitted his written submission dated 21.08.2023, relevant part of which is as under:

“The assessee was engaged in the retail trading in medicines. He was the proprietor of proprietorship concern M/S DI SHA and partner of the partnership firm M/S DI SHA w.e.f. 01.01.2017. As the assessee is engaged in retail trading in medicines, so all the sales comprise of cash sales only. Since medicine is an essential item, Government allowed sales in SBNs and therefore the shop remained open during the demonetization period and cash sales were made during the said period also. The assessee sold medicines during demonetization period in new currency. During the course of scrutiny assessment, the assessee produced audited Profit and Loss Account and audited Balance Sheet, copies of cash book, sales register, purchase ledger and bank statements before the Ld. A.O.

Ld. A.O. has verified all such documents.

During the demonetization period the business of the assessee was in full operation because medicines are essential items and during demonetization period, cash sales were made by the assessee.

Turnover of the assessee’s proprietorship business during the last 3 years are as under:

<i>Financial Year</i>	<i>Turnover from 1st April to 31st December (Rs.)</i>	<i>Turnover from 1st January to 31st March the (Rs.)</i>	<i>Total Turnover during F.Y.(Rs.)</i>
2014-15	2,65,89,107.00	1,20,65,142.00	3,86,54,249.00
2015-16	4,00,98,583.65	1,15,36,431.00	5,16,35,014.65
2016-17	4,61,18,460.00	N.A.	4,61,18,460.00

There has been a gradual growth in the overall scale of business of assessee's proprietorship. [Copy of Financial Statement as on 31.12.2016 is being enclosed and marked as Annexure-A, Pgs: 1 to 3]

Total Deposits made during the 01.04.16 to 31.12.16 into Bank are as under:

Sl.No.	Nature of Deposit	State bank of India (A/c No.35713331897)	Axis Bank (A/c No.913030050962370)
1.	Cash Deposit	72,91,700.00	3,46,62,870.00
2.	Cheque Deposit	8,60,440.00	35,47,707.00

[Copies of Bank statement for F. Y. 2016-17 are being enclosed and marked as Annexure:C for Axis Bank Statement with BRS, Pgs: 1 to 23 and Annexure:D for State Bank of India Pgs: 1 to 11]

Comparison of Cash Deposits during demonetization period:

Sl.No.	Name of Bank	From 09.11.2014 to 30.12.2014 (Rs.)	From 09.11.2015 to 30.12.2015 (Rs.)	From 09.11.2016 to 30.12.2016 (Rs.)
1.	State Bank of India (A/c No.35713331897)	-	-	49,51,800.00
2.	Axis Bank (A/c No.913030050962370)	53,36,100.00	40,23,380.00	52,80,950.00
3.	Bank of Baroda	-	4,26,480.00	-
Total		53,36,100.00	44,49,860.00	1,02,32,750.00

Cash deposited into the above banks are out of cash in hand as on 08.11.2016 and cash sales during the demonetization period i.e. from 09.11.2016 to 30.12.2016 and during the F. Y. 2016-17 [Copy of Cash Book of F. Y. 2016-17 is being enclosed as Annexure: E, Pgs: 1 to 51]

Since there had been an increase in the overall scale of business of the proprietorship over the years, so a corresponding increase in the cash deposits during the relevant period on Year to Year basis is also reasonable.

Segregation of Cash Deposits made during demonetization period i.e. 09.11.2016 to 30.12.2016 based on currency notes[SBNs and Legal New Currency]:

Sl.No.	Name of Bank	Deposits made in Specified Bank Notes (SBNs) (Rs.)	Deposits made in New Legal Notes(Rs.)	Total (Rs.)
1.	State Bank of India(A/c No.35713331897)	48,83,500.00	68,300.00	49,51,800.00
2.	Axis Bank(A/c No.913030050962370)	5,74,000.00	47,06,950.00	52,80,950.00
Total		54,57,500.00	47,75,250.00	1,02,32,750.00

The cash deposits of Rs. 47,75,250 made with New Legal Notes are completely comprised of the receipts from cash sales during the demonetization period. The cash deposits of Rs. 54,57,500 made in Specified Bank Notes (SBNs) are comprised of receipts from cash sales and deposits from the cash balance as on 08.11.2016. [A Copy of the statement of segregation of bank notes employed for transactions during the demonetization period i.e. 09.11.2016 to 30.12.2016 as certified by the banks is being enclosed as Annexure F. Pgs: 1 to 2].

Assessee is engaged in line of retail trading in medicines, which is an essential item. Hence his medicine shop remained open during the demonetization period i.e. from 09.11.2016 to 31.12.2016. Cash sales were made during the demonetization period.

During demonetization as per RBI guidelines, any Pharmacy, medical shop was one of the specified entities /persons permitted to accept special Bank Notes (SBNs) of Rs. 1000 and Rs. 500 towards Sales of Medicines. Practically, there was a rush and demand at the counter by people who wanted to procure medicines In exchange of their SBNs and that Sales were increased during demonetization period.

The assessee was covered by the category of exempted entities who were permitted to accept SBN during the demonetization period.

Further Ld. A.O. has not rejected the turnover of the assessee, but has treated the same as unexplained only for the reason that the assessee has deposited cash into bank.

As per section 68, where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source of the same or the

explanation offered by the assessee is not satisfactory, in the opinion of the Assessing Officer, the sum so credited may be charged to Income Tax as the Income of the assessee of the previous year.

The conditions for the applicability of Section 68 would therefore be as follows:

- (1) The existence of the books of accounts made by the assessee himself.*
- (2) A credit entry in the books of accounts. And;*
- (3) The absence of a satisfactory explanation by the assessee about the nature and source of the amount credited.*

In the instant case the assessee produced books of accounts of the business. The assessee clearly gave the explanation that cash deposited into the business current account was out of cash in hand and cash sales. Cash books, sale register and bank statements were produced before the Id. A.O. and all explanation was given to the Id. A.O. The assessee categorically stated that all cash deposits were made out of sales/turnover of the business only. The Id. A.O. admitted the sale and purchase as per books of the assessee. Therefore, the Id. A.O. accepted the books of accounts of the assessee”.

5. Before advertng to the finding of the Id. CIT(Appeals), we would like to take note of the finding recorded by the Id. Assessing Officer to find out as to how such an explanation was appreciated by him for disbelieving the stand of the assessee. The finding from paragraph no. 3.1.5 of the assessment order is the relevant finding, which reads as under:-

“3.1.5. From the above facts it is clear that cash deposit trends of the assessee during demonetization period and in earlier few months is abnormal. It is also not at par with the earlier year or subsequent year. From the sales & purchase details, it is very much clear that sales & purchase were within the close associates & relative of the assessee and within is well control. The above fact clearly indicates that the assessee prepared & arranged its books of for the Asst. Year 2017-18 in such a way that huge cash balance is comes out as on 08-11-2016 i.e. the day before the announcement of demonetization. The cash receipts & cash sales shown in the month of October & November’ 2016 is also abnormal in

comparison to other period and it was also arranged in similar way to justify the huge cash deposit in banks. In view of the abovementioned fact & circumstances, it is, therefore clear, that the assessee failed to substantiate the source of fund of cash deposit in its bank accounts with proper denomination of notes received & subsequently deposited in its bank account. Considering the abovementioned opening cash balance for the month of January' 2016 to June' 2016 and December' 2016 to March' 2017, the average cash balance per month comes to Rs.2,16,821/-. For the sake of natural justice, it may be considered that the cash balance as on 01-11-2016 was Rs.2,16,821/-. Considering the total receipts and payments from 01-11-2016 to 08-11-2016, net cash balance on 08-11-2016, therefore, comes to Rs.3,36,934/-. For the sake of natural justice, if it is considered that out of the above, Rs.36,934/- was in other than SBNS, total SBNS on 08-11-2016 comes to Rs.3,00,000/- [Rs.3,36,934/- (-) Rs.36,934/-]. The above facts & circumstances clearly indicates that the assessee deposited the balance sum of Rs.99,32,750/- [Rs. 1,02,32,750/- (-) Rs.3,00,000/-] in its bank accounts out of its undisclosed source of income for the Asst. Year 2017-18. The above facts & circumstances clearly indicates that the assessee deposited the above sum of Rs.99,32,750/- in his bank accounts out of his undisclosed source of income for the Asst. Year 2017-18. Hence, Rs.99,32,750/- is added with the total income of the assessee for the Asst. Year 2017-18 as unexplained cash credit U/s 68 of the Income Tax Act, 1961. Tax will be computed accordingly against this addition U/s 115BBE.

6. The Id. 1st Appellate Authority, though partly accepted the submission of the assessee but adopted a very different analogy to determine the unexplained cash alleged to be introduced by the assessee in his accounts and we deem it appropriate to take note of that finding also from paragraph no. 5.3, which reads as under:-

“5.3. I have considered the findings of the AO and submissions of the appellant. It is observed that there is increase in sales of the appellant in past three years. However, the increase in cash deposits during the demonetization period is much higher than the corresponding increase in sales. Since the trade of the appellant fell in essential commodities, it is acceptable that people might have paid in SBN during the demonetization period for purchase of medicine, but despite

this the total cash deposits should correspond to the increase in sales. Further, the increase in cash balance in cash book should also be supported by the comparative data of monthly cash balance. It is important to note that the appellant during the assessment proceedings and also during the appeal proceedings has failed to provide any vouchers etc. in support of its contention of proving the cash sales. Hence taking into consideration the overall picture of the case I find it appropriate to allow the benefit of the cash deposited in bank during the demonetization period on pro-rata basis corresponding with the increase in turnover ratio of sales during the pre-demonetisation period. It is noted that the appellant has registered an increase in sale from the period April to December in FY 2014-15 to 2015-16 and from FY 2015-16 to 2016-17 at 50% and 15% respectively, bringing the yearly average to 32.5%. In the period 8th November to December in F.Y 2015-16 the cash deposits in bank are of Rs.44,49,860/-. Hence applying the increase in average turnover ratio to this amount the cash deposits in FY 2016-17 during the same period should be around 132.5% of 44,49,860/- which comes to Rs. 58,96,064/-. Since the AO has already given credit of the opening cash balance as on 8.11.2016 which has been calculated by him by applying the averages, the addition made by the AO of 99,32,750/- is required to be reduced by an amount of Rs. 58,96,064/-. In view of the aforesaid discussion, the addition to the tune of Rs. 40,36,676/- on the issue of unexplained cash deposits in bank is upheld. The ground of appeal raised is partly allowed.

7. A perusal of both the impugned orders would suggest that none of the Officer was able to analysis the specific stand of the assessee and unnecessarily assumed availability of unexplained cash credit with the assessee. Let us first deal with the finding of the ld. Assessing Officer. The ld. Assessing Officer has observed that cash deposit trend of the assessee during demonetization period and in earlier few months is abnormal. To our mind, this finding is absolutely incorrect. The assessee has demonstrated in the tabulated details that cash deposit from 09.11.2014 to 30.12.2014 in Axis Bank Account was Rs.53,36,100/-. The next period is 09.11.2015 to 30.12.2015, the cash deposit was

Rs.40,23,380/-. From 09.11.2016 to 30.12.2016, the cash deposit in Axis Bank was only Rs.52,80,950/-. Though apart from other cash also being deposited in one of the bank accounts with State Bank, which is Rs.49,51,800/-. But the total turnover of all these three years is being analyzed from 1st April to 30th December, then there is hardly any abnormality. In F.Y. 2014-15, it was 2.64 crores. In F.Y. 2015-16, it was roughly Rs.4 crores and F.Y. 2016-17, it was Rs.4.61 crores. There is a gradual increase in the turnover. There is no all of a sudden increase in any year. Similarly, there is no abnormal growth in the turnover from 1st January to 31st March in all these three years.

8. The next observation is that the ld. Assessing Officer has not visualized the circumstances during demonetization, where every amount available, is required to be routed through the Bank accounts. He has made analysis of average cash balance from January, 2016 to June, 2016 and December, 2016 to March, 2017. In other words, on an overall analysis, we are of the view that ld. Assessing Officer has tried to compare un-comparable without visualizing the effects of the true situation. The other expectation of the ld. Assessing Officer was that the assessee should have maintained details of old and specified currency, which were deposited in the Bank, but no such guidelines were issued to the assessee by the Income Tax Department.

9. On the other hand, ld. CIT(Appeals) though reduced the quantum addition, but adopted a very different analogy. He calculated the availability of cash in the hands of the assessee in

the same ratio in which turnover of the business increased in different years starting from F.Y. 2014-15. The Id. CIT(Appeals) ought to have analyzed the purchases also and whether such a profit has resulted to the assessee, which can give rise to unexplained cash to the assessee. In such a situation, why the books of account should have not been rejected. It is to be find out by the Revenue that the profit ratio from sales and purchases could not be swindled of that magnitude but they have not examined in all that aspect. Therefore, we are of the view that this addition is not sustainable. We allow the appeal of the assessee and delete the addition.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 18/06/2024.

Sd/-	Sd/-
(Rajesh Kumar)	(Rajpal Yadav)
Accountant Member	Vice-President (KZ)
<i>Kolkata, the 18th day of June, 2024</i>	

*Copies to : (1) Subhojit Paul,
Begampur New Railway Station,
Chanditala, Begampur,
Hooghly-712306, West Bengal*

*(2) Assistant Commissioner of Income Tax,
Circle-23(1), Hooghly,
Khadina More, Station Road,
Chinsurah-712101, West Bengal*

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

(4) CIT- , Kolkata

(5) The Departmental Representative;

(6) Guard File
TRUE COPY

By order

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

Laha/Sr. P.S.