

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

ITA No.1730/Del/2024
(Assessment Year : 2017-18)

Vijay Kumar Jain WZ-34/1, Golden Park, Rampura, Delhi – 110 035 PAN No. AAFPJ 6413 M (APPELLANT)	Vs.	Income Tax Officer Civic Centre Minto Road, Delhi – 110 002 (RESPONDENT)
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Assessee by	Shri S. K. Tulsian, Adv. Ms. Bhoomija Verma, Adv. & Shri Lakshya Budhiraja, C.A.
Revenue by	Shri Amit Katoch, Sr. D.R.

Date of hearing:	18.07.2024
Date of Pronouncement:	31.07.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order passed under section 250 of the Act by the Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi dated 14.02.2024 arising from the assessment order dated 30.12.2019 passed by the ITO, Ward-43(4), Delhi under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2017-18.

2. The assessee has raised several grounds challenging various facets of solitary additions namely ₹ 1,36,90,000/- on account of unexplained cash deposits in Bank account during demonetization.

3. Apart from the main Grounds, the assessee has also moved Additional Ground raising legal objection, which is reproduced hereunder:

“1. The Ld. AO has erred in making the impugned addition tune of Rs.1,36,90,000/- merely based on surmises and conjectures, by completely ignoring the fact that the cash deposited in bank account of the Appellant was out of the cash sales which had been already offered to tax by reflecting the same in the trading and profit and loss account, and thus the impugned addition amounts to double addition.”

3.1 In support of the admission for additional ground, the learned Counsel for assessee contended that it is well settled that a question of law can be raised at any stage of the proceedings as held by the Hon’ble Supreme Court in the case of *Chitturi Subbanna v. Kudapa Subbanna & Others [1965 AIR 1325]*. A reference was also made to the judgment rendered by the Hon’ble Supreme Court in the case of *National Thermal Power Co. Ltd. vs. Commissioner of Income-tax [1998] 229 ITR 383 (SC)* for admission of additional ground.

3.2 The prayer for admission of additional ground noted above, which is not set forth in memorandum of appeal is being admitted for adjudication in terms of Rule 11 of Income Tax (Appellate Tribunal) Rules, 1963 owing to the fact that objection raised in the additional ground is legal in nature for which relevant facts are stated to be emanating from existing records.

4. Turning to the facts as emanating from record, the assessee is an individual engaged in the business of trading of fabrics since last many years under the name and style of M/s. Akash International with its principal place of business at Golden Park, Rampura, Rohtak Road Delhi and branch office at Gurgaon. The assessee e-filed his return of income for A.Y. 2017-18 in question declaring total income at ₹ 13,29,450/-.

The case of the assessee was subjected to scrutiny assessment by issuance of notice under Section 143(2) and Section 142(1) of the Act. The AO inter alia enquired into source of cash deposits during demonetization period. The explanation placed by the assessee before the AO towards source of cash deposit during demonetisation was however, not found satisfactory by the AO. The Assessing Officer accordingly treated the cash deposits of ₹ 1,36,90,000/- made by the assessee during demonetisation period i.e. from 09.11.2016 to 31.12.2016 as undisclosed income of the assessee in the form of cash credit within the meaning of section 68 read with section 115BBE of the Act.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) also, however, confirmed the action of the AO primarily on the premise that; firstly, no cash sales were recorded for earlier F.Y. 2015-16 and and later F.Y. 2017-18. The deposits made in F.Y. 2016-17 relevant to A.Y. 2017-18 in question showed significant cash sales amounting to ₹ 1,41,79,228/- departure to other years; secondly, the sudden spike in cash sales during F.Y. 2016-17, particularly in the months leading up to demonetisation, raised suspicions of the cash being unexplained or not derived from genuine business transactions. The CIT(A) thus denied any relief on this count.

6. Further aggrieved by the denial of relief by the CIT(A), the assessee has knocked the door of the Tribunal.

7. When the matter was called for hearing, the learned Counsel for the assessee argued in length and made wide ranging submissions to assail the action of the Revenue authorities. The learned Counsel broadly submitted that; (a) the cash deposits are sourced out of the cash sales duly recorded in the books of accounts which have been subjected to statutory audit and also produced before the AO. The cash sales made were out of purchases, majority of which are imported goods for which the payment have been made through banking channel and the purchases have not been

doubted by the AO at all. Thus where the purchases have been accepted as genuine, the corresponding sale and consequent reduction of stock declared in the books cannot be doubted in isolation (b) the total sales including cash sales are duly reported and vouched by VAT returns. (c) the cash sales have been duly offered to tax by reflecting the same in the 'statement of trading and Profit and Loss' and thus impugned addition has the effect of double additions; one on account of cash sales through trading in Profit and Loss account and two, additions on account of unexplained sources.

7.1 Elaborating further, the learned Counsel submitted that the total purchases of Goods (fabric) during the F.Y. 2016-17 stands at ₹ 18.10 crore majority of which i.e. ₹ 17.83 crore is purchased by way of import and remaining sum of purchase ₹ 27.52 lakh is carried out by way of domestic purchase. The purchases so carried out were duly recorded in its books of accounts and the respective customs duty and other levy on such imports were paid by the assessee. Similar pattern of imports can be seen in other financial years also. To support the genuineness of the import/purchases, copy of sample bill of entry, purchase registers, bank book, payment of customs duty etc. were produced. The learned Counsel thus quipped that legitimacy of purchases made are not under any cloud. During the year under consideration, total sale of Goods stands at ₹ 35.39 crore out of which non-cash sales stands at ₹ 33.97 crore and cash portion to sales in cash at meager ₹ 1.41 crore which works out to only 4% of the total sales. Month-wise details of purchase and sales/details of party-wise purchases register and details of party-wise sales were provided to the AO. Significantly, the cash sales of ₹ 1,41,90,610/- is also subjected to Value added tax (VAT) except for a small exempt amount of ₹ 9,40,614/- out of cash sales. The entries towards purchase, sales, tax and other levies on such transactions as recorded in books were audited by the statutory auditors. Besides, no pervasive enquiries were conducted by the AO to substantiate the allegation that the source of cash deposited in the bank by the assessee

was ingenuine. The additions were made on wild presumptions and surmises disregarding documentary evidences.

7.2 The learned Counsel also explained the need for small component of cash sales and for such purposes, he adverted to Balance Sheet and Profit and Loss account pertaining to F.Y. 2015-16 to submit that the assessee was having woefully meager resources of its own as evident from proprietors capital of ₹ 9.45 lakhs only. As against very low capital, the assessee was beset with huge sundry creditors liability to the tune of ₹ 16.92 crores and large scale inventory of ₹ 13.32 crore. In a pursuit to set right tyranny of such imbalanced state of affairs and to urgently mitigate the hardship on account of financial stringency, the assessee resorted to cash sales of insignificant amount to achieve some liquidity as well as to get rid of perishable fabric to curb losses. The primary object of creating liquidity was to save reputation in the market by obtaining liquidity. It is a matter of record that the entire sales including cash sales were duly reported in the books and profit deduced therefrom was duly offered for taxation. Thus the reporting of purchases, sales, stock and resultant profits derived completes the cycle and a separate addition linked to cash sales is beyond comprehension. The action of the AO is also squarely opposed to rudimentary accounting principles, which in effect, seeks to tax the income twice one in the form of profits and other in the form of cash deposits under section 68 of the Act.

7.3 The learned Counsel submitted that the action of the Revenue authorities are a mere *ipsi dixit* whereas the transactions reported by the assessee are objectively justifiable. Both profits from sales and the cash sales itself has been assessed driven by misplaced suspicion and conjectures and based on some unfounded contemplation. While holding the source of cash deposits explained to be out of cash sales, to be unsatisfactory, the books of accounts have not been rejected. The learned Counsel exhorted that where the AO believed on the existence of alleged irregularities in the books of accounts, it was incumbent upon him to exercise the powers conferred under

section 145(3) of the Act which mandates the AO to make an assessment in the manner provided under Section 144 of the Act. For doing so, the books of accounts requires to be ordinarily rejected. Nothing of this sort has been done. For such proposition, the learned Counsel referred to the judgments rendered by the Jurisdictional Delhi High Court in the case of *PCIT vs. Forum Sales Pvt. Ltd. ITA No.862/2019* judgment dated 1st March, 2024 which dwells upon rejection of books in such circumstances. The learned Counsel, thereafter, referred to the judgment delivered by the Hon'ble Supreme Court in the case of *Lalchand Bhagat Ambical Ram vs. the CIT (1959) 37 ITR 288 (SC)* to submit that in the similar facts the Hon'ble Supreme Court observed that where the books of accounts of the assessee were not challenged *per se*, the explanation offered by the assessee requires to be construed as reasonable and the decision of an authority based on misplaced suspicion, conjecture and surmises is not sustainable. The learned Counsel thereafter, referred to several decisions rendered by the Co-ordinate Bench to broadly assert that when the cash deposits in bank represented by cash sales duly forming part of trading account and consequently offered for taxation coupled with the fact that no defects were pointed out in the books of account, there is no case for making additions under Section 68 of the Act.

7.4 The learned Counsel, in conclusion, submitted that the impugned additions made by the Revenue is driven by misplaced suspicions dehors the discernible facts emerging from records and is devoid of any legal and factual foundation.

8. Per contra, the learned DR for the Revenue referred to and relied upon the first appellate order and the assessment order. The learned DR in furtherance pointed out that the cash sales have been wrongly shown merely to justify the unaccounted source of cash deposited during the demonetization period. The cash sales do not really exist when seen in the backdrop of the conduct of the assessee in the earlier years and the subsequent years. The learned DR thus submitted that the explanation towards source

of cash deposits cannot be recorded as satisfactory in the light of facts made available on behalf of the assessee and thus, the conclusion drawn by the Revenue authorities cannot be assailed.

9. We have carefully considered the rival submissions and perused the assessment order and first appellate order. The material referred to and relied upon in the course of hearing was taken in to account as per Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963 together with case laws adverted to in the course of hearing.

9.1 It is the case of the assessee that the source of cash deposits in question bears direct nexus to cash sales made prior to such deposits. The cash sales are stated to be out of purchases made which are predominantly import goods. The cash sales, when seen in the context, is quite negligible hovering in the vicinity of about 4% of the total sales. The assessee is engaged in trading of fabric which are prone to be obsolete and perish over a period of time. Having regard to the very low capital invested in the business and operations being carried out on working capital debt, the assessee was compelled to save reputations and indulge in cash sales for immediate redemption of stark paucity of financial resources and also to get rid of perishable component of stock. It is thus the case of the assessee that in the context of peculiar factual matrix, there is no warrant to make such additions solely on on suspicion, surmises and conjectures.

9.2 It is thus alleged that the additions were carried out disregarding the facts and are coloured by irrelevant considerations. The assessee has broadly discharged the onus to explain the proprietary of credits by way of cash deposits on the counters of Section 68 of the Act.

10. The issue involved is essentially a question of fact and depends on appraisal of all relevant evidences on record on cumulative basis. As contended, it is a matter of record that cash sales giving rise to cash deposits have been duly recorded in the

‘statement of profit and loss’ and the resultant profits have been admittedly declared in the return of income. The income thus arising from cash sales has been duly subjected to taxation. The cash sales under cloud are also declared in the VAT returns filed before the concerned Govt. agencies. The cash and other sales are inseparable from imported purchases. No aspersions have been cast on purchases reported in the books for which the payments have been made through banking channel and custom duty have also been paid. Similar is the pattern in the earlier years as well as the subsequent years. Thus, where the propriety of purchase and stocks have been endorsed, casting aspersion on a minuscule cash sale gives infallible impression that the action of the AO is driven by suspicion, conjecture and surmises.

10.1 Needless to say, sale of goods has corresponding effect on the closing stock as well as the profitability. These aspects have not been questioned. The Assessing Officer has picked up the amount declared by way of cash sales and treated that as non-existent to hold the corresponding cash deposits as unexplained. The assessee, on the other hand, has demonstrated the factum of cash sales to be genuine by the direct and circumstantial evidences as noted above.

10.2 The Revenue, in our view, has based itself findings on suspicion and conjectures and on improper rejection of tangible material. The assessee on the other hand has successfully demonstrated the propriety of cash sales by corresponding purchases, reduction in stock and declaration of profits on sales.

10.3 Having assessed a credit of revenue character as income, it is outside the remit of the AO to subject the same credit under different provision i.e. section 68 yet again, inflicting double whammy on the assessee. Besides, the books of accounts and book results have been not rejected per se. No defect has been pointed out on the declarations made towards purchases, the closing stock and the profits either. The

additions made have resulted assessment of cash sales twice which is not permissible in law.

11. It is trite that suspicion, howsoever strong, cannot take the place of proof as held in *Umacharan Shaw & Bros. vs. CIT (1959) 37 ITR 271 (SC)*. The Hon'ble Supreme Court in the case of *Dhakeswari Cotton Mills Ltd v. Commissioner of Income Tax (1954) 26 ITR 775 (SC)* has observed that powers given to the Revenue authority, howsoever, wide, do not entitle him to make the assessment on pure guess without reference to any evidence or material. The assessment cannot be framed only on bare suspicion. The assessment should rest on principles of law and one should avoid presumption of evasion in every matter. The assessee, in the instant case, has sufficiently demonstrated the source of cash deposits. On a broader reckoning, the apprehension raised by the Revenue authorities militates against the tangible material and is thus extraneous. The additions made under section 68 of the Act is thus unsustainable in the facts of the case. The order of CIT(A) is thus set aside and vacated on this count. The Assessing Officer is directed to cancel the impugned additions towards cash deposits.

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

Order was pronounced in the open court on 31.07.2024

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 31.07.2024

Priiti Yadav, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI