

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. Nos. 316 & 317/Asr/2024

Assessment Year: 2016-17

Ishtiaq Ahmad Rather,
Khidmat Complex, Legal
Lane, Srinagar, J & K
[PAN: AEFPR6861M]
(Appellant)

Vs.

Income Tax Officer,
Ward 1, Srinagar
(Respondent)

Appellant by : Sh. Rohit Kapoor, CA &
Sh. V. S. Aggarwal, ITP
Respondent by : Sh. Harmesh Lal, Sr. DR
Date of Hearing : 27 & 29.08.2024
Date of Pronouncement : 10.09.2024

ORDER

Per Dr. M. L. Meena, AM:

Both the appeals have been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi even dated 19.02.2024 in respect of Assessment Year: 2016-17 which is arising out of

the Assessment order dated U/s 144 of the Act dated 12.12.2018 and penalty order u/s 271(l)(c) dated 04.06.2019 passed by the ITO Ward 1, Srinagar.

2. The assessee has raised the following grounds of appeal in ITA No. 316/Asr/2024:

- “1. *On the facts and circumstances of the case, the Ld. CIT(A) vide order u/s 250 dated 19.02.2024 has erred in confirming the addition made by the AO to the tune of Rs. 9853000/- made u/s 68 on account of cash deposited.*
2. *That the CT(A) has erred in confirming the addition made by the AO without appreciating the fact that the Ld. Assessing officer has erred in assessing the total income at Rs.10373912/- against total income of Rs. 520912/- returned by the assessee.*
3. *That the CT(A) has erred in confirming the addition made by the AO without appreciating the fact that the Ld Assessing officer has erred in law and on facts in making an addition of Rs 1195000.00/- and Rs. 8658000/- on account of cash deposited in HDFC Bank account no 07241000043039 and 17391930006848 respectively without considering the availability of opening cash in hand and withdrawals from bank during the year.*
4. *That the Ld. CIT(A) has erred in confirming the addition of Rs. 985 000/- in respect of cash deposits in both the bank accounts without appreciating that the assessee was engaged in the business activity of retail trading of hardware and ceramics items and all the deposits were in connection with the said business. That the CIT(A) has erred in confirming the addition ignoring the fact that the payments appearing on the debit side were purely used for making purchase and not for any other purpose.*
5. *That the CIT(A) has erred in confirming the addition made by the AO u/s 68 without appreciating the fact that the assessee was a small business man and had filed the return of income under section 44AD on presumptive taxation basis. That the provision of section 68 could not be applied where no books of accounts were maintained.*

6. *That the CT(A) has erred in confirming the addition made by the AO relying on incorrect facts and findings by the Ld. AO. That the Ld. AO has reported inaccurate turnover of Rs.3292560 against the actual turnover shown in ITR u/s 44ADis Rs.65,11,400.*
7. *That the CIT(A) has erred in confirming the action of the AO ignoring the fact that the assessment completed in the absence of notice u/s 143(2) is without jurisdiction. That the notice u/s 143(2) dated 08.08.2017 is bad in law as the same does not find place on the portal. That the assessment completed on the basis subsequent time barred notice issued u/s 143(2) on 13.06.2018 is bad in law.*
8. *That the CIT(A) has erred in confirming the addition made by the AO solely due to non- compliance to notices without adjudicating the case on merits*
9. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”*

3. Ground of appeal in ITA No. 317/Asr/2024:

- “1. *That the order passed by NFAC u/s 250(6) of the income tax act 1961 confirming the penalty on income of Rs. 3271507/- u/s 271(l)(c) levied by the AO; is against the fact of the case and bad in law.*
2. *That the Ld. CIT(A) has erred in confirming the penalty u/s 271(1)(C) on the basis of addition confirmed by the CIT(A) via quantum order passed u/s 250(6) 19.02.2024. That the penalty confirmed vide order passed u/s 250(6) is bad in law as the penalty appeal has been dismissed on the basis of confirmation of addition vide order dated 19.02.2024 without adjudicating the case on merits.*
3. *That the penalty confirmed by the CIT(A) is bad in law as the same has been confirmed ignoring the fact that the assessment has been completed in the absence of notice u/s 143(2). That the error committed by the AO is a fatal error and subsequent penalty imposed u/s 271(l)(c) in the absence of statutory notice is void ab initio.*
4. *That without prejudice to the aforesaid grounds, the CIT(A) has erred in confirming the penalty u/s 271(l)(c) on the basis of quantum addition confirmed b the CIT(A) which is against the facts of the case.*

5. *That the Ld. CIT(A) has erred in confirming the penalty u/s 271(1)(C) in haste and without any cogent material on record to prove concealment of income. That the penalty has been confirmed ignoring the fact that the entire deposits in the bank account represent sales and the same has been accepted in other years.*
6. *That the appellant craves leave to add or amend any of the grounds of appeal before the appeal is finally heard or disposed off.”*

4. There was a delay of 33 days in filing the appeal. The appellant has filed the application for condonation with support of notarized affidavit of the previous council which reads as under:

- “1. *This is in regard to delay in filing of appeal before the Hon'ble ITAT. It is very humbly submitted that in the above said appeal is being filed against the order passed by NFAC, Delhi on 19.02.2024. The said appeal was required to be filed within 60 days i.e. by 19.04.2024.*
2. *The present appeal is being filed before the Hon'ble ITAT Amritsar Bench after a delay of 32 days [Up to 21.05.2024] in filing of the appeal. It is pertinent to mention here that the legal matters in the case of the assessee were being handled by CA Junaid Qadir and the requisite documents for the purpose of filing of appeal against the order for the AY 2016-17 were lying in his possession. However, the assessee appointed new counsel for the purpose of pursuing matters before ITAT. That the delay in filing the appeal was primarily due to the fact that the old counsel CA Junaid Qadir failed to handover the documents in relation to the case of the assessee to the new counsels ShVirsa Aggarwal and CA Rohit Kapoor. As such, the timeline as embedded for filing of appeal could not be adhered to due to the circumstances as stated above. In this regard, the copy of affidavit from CA Junaid Qadir is being enclosed herewith for ready reference.*
3. *It is therefore, requested that the delay in filing the appeal on account of exceptional circumstances, may, please, be condoned and oblige in view of the judgment laid down by the **Supreme Court in the case of [1956] 29 ITR 607 (SC)** in which it was held as under: -*

*“8. It is observed that even in the present case, the applications filed by the assessee before the Id. CIT(Appeals) seeking condonation of the delay in filing the appeals for all the three years under consideration were duly supported by an affidavit filed by the assessee as well as the medical certificates and since the contents of the same were sufficient to show that the assessee had acted bonafide under the advice from his consultants and there was no negligence nor any deliberate or intentional act on his part to delay in filing of appeals, **we are of the view that there was a sufficient cause for the delay on the part of the assessee in filing the appeals before the Id. CIT(Appeals) for all the three years under consideration. Ine, therefore, condone the said delay and remit the matter back to the Id. CIT(Appeals) for disposing of the appeals of the assessee for all the three years under consideration on merit in accordance with law after giving proper and sufficient opportunity of being heard to the assessee.**”*

5. Having heard both the sides on the condonation of delay in filing the appeal by 33 days and perusal of material evidence, it is noted present case, the appellant is seeking condonation of the delay in filing the from the affidavit of the previous counsel of the assessee that the delay in filing the appeal was primarily due to the fact that then counsel CA Junaid Qadir failed to handover the documents in relation to the case of the assessee to the new counsels Sh. Virsain Aggarwal and CA Rohit Kapoor. The same constitutes sufficient cause as there was no negligence nor any deliberate or intentional act on the part of the appellant for the said delay in filing of appeal. We, therefore, condone the delay and admit the appeal for adjudication.

6. Briefly the facts of the case are that the case was selected for limited scrutiny under CASS to examine “Whether the cash deposit has been made

from disclosed sources?"The appellant assessee has filed e-return on 16/05/2016 declaring total presumptive income of Rs.5,20,912/- under section 44AD of the Income Tax Act. The assessee was engaged in business of trading in hardware and ceramics items through proprietorship concern M/s Muble Impex from Hyder Pora, Srinagar. The case was reopened on the basis of information obtained from HDFC bank, AL Rehman Shopping Complex, HS High Street, Srinagar in respect of cash amounting to Rs. 1195000/- deposited in HDFC saving bank account no 07241000043039 and Rs. 8658000/- in saving bank account no 17391930006848. The assessment was completed vide order passed u/s 144 on 12.12.2018 by making an addition of entire cash deposits of Rs. 9853000/-.

7. Being aggrieved with the assessment order, the assessee went in appeal before the Ld. CIT appeal who confirmed the addition made by the AO by observing as under:

7.1 The appellant has contended that he has furnished bank statements and Shop registration certificate to support his claims. No such annexures have been found uploaded with Form 35. Further, there is no evidence to prove the correctness of claim regarding business of hardware nor eligibility for computation of income under the presumptive tax scheme u/s 44AD of the Act. The history of non-compliance during the assessment proceedings resulting in passing of an ex-parte order as well no response during the appellate proceedings shows reluctance on the part of the appellant in submission of documentary evidences to prove the nature and source of cash deposits to the tune of Rs. 98.53 lacs out of total credits of Rs.2.41 crores in both the bank accounts. The reconciliation of sales with bank deposits submitted by the appellant are devoid of any correctness in the absence of any bank

statements or justification as regards the alleged business income reported u/s 44AD of the Act. In this view, the action of the AO is upheld and accordingly, addition of Rs. 98,53,000/- confirmed.

8. In ground No. 7 and additional ground, the Learned AR raised a legal ground that the assessment order was passed u/s 144 without issuing a valid notice u/s 143(2). The objection of the counsel was perused, and it has been found factually incorrect as the assessee was provided with the copy of valid notice issued u/s 143(2) of the Act by the Id. DR, during the course of hearing. As such, the legal issue of notice u/s 143(2) was not further pressed by the counsel and it is rejected as not pressed.

9. In ground No. 3 and 6, the appellant challenged that the CT(A) has erred in confirming the addition made by the AO without appreciating the fact that the Ld Assessing officer has erred in law and on facts in making an addition of Rs 1195000.00/- and Rs. 8658000/- on account of cash deposited in HDFC Bank account no 07241000043039 and 17391930006848 respectively without considering the availability of opening cash in hand and withdrawals from bank during the year and thus reported inaccurate turnover of Rs.3292560 against the actual turnover shown in ITR u/s 44AD is Rs.6511400/-.

9.1 The learned council for the assessee has submitted that the Ld. CIT(A)

has erred in not appreciating the fact that he had declared turnover of Rs. 6511400/- in the return of income filed u/s 44AD. The Learned council further argued that the CIT(A) erred in not appreciating that the AO made addition of entire cash deposits of Rs. 9853000/- which include contra entries transferred from one bank to another bank, cash withdrawal from bank amounting to Rs. 6517683/-. In this regard the assessee submitted reconciliation statement which is produced hereunder: -

Total bank credit in 07241000043039	9386278
Total bank credit in 1739199300006848	14783908
Total Credits	24170186
Less Transfer from one bank to another bank as per annexure A enclosed (Please refer page no of PB 69-71, refer pages	-7779987
Less: Rotation of cash as per annexure B attached at page no of PB 72-78	-6517683
Less: Amount received from sister concern M/s MubleImpexPvt Ltd	-1880000
Less: Amount disclosed as turnover	-6511400
Less amount recovered from opening debtors in bank	-1481116
	Nil

9.2 In support of the argument regarding rotation of funds, the learned AR presented a table marked as Annexure B representing a cycle of withdrawals

and re-deposits which is placed on record. The learned counsel of the assessee vehemently reiterated that all the deposits and withdrawals were made in the course of business operations and that the cash available was sufficient to cover the cash deposits. In this regard the assessee placed on record cash book in annexure C and argued that the cash deposits were made out of legitimate withdrawals and were consistent with the recorded sales. The submissions of the learned counsel are produced hereunder: -

*12.6 That while confirming the addition, the CIT(A) also failed to consider the crucial fact that there was no instance of negative cash balance when accounting for the sales declared in the Income Tax Return (ITR) at Rs.6511400/-. This suggests that the cash available was sufficient to cover the deposits, further negating any grounds for treating these deposits as unexplained or warranting an addition. **In support of this argument, we are enclosing here with copy of the cash book, which has been marked as Annexure C and is available on page no. 79-97 of the Paper Book (PB).** The cash book demonstrates the flow of funds, showing that the cash deposits were made out of legitimate withdrawals and consistent with the recorded sales. Therefore, when considering the benefit of these cash withdrawals and the proper accounting of sales, it becomes evident that no addition is justified. The position of cash withdrawals and cash deposit as per bank statement is as under:-*

Name of bank	Account number	Cash Deposit	Cash withdrawals
HDFC	3039	1195000	2210983
HDFC	6848	8658057	4306700
Total		9853057	6517683

5.3 In this regard the learned AR placed reliance upon the following case laws to strengthen the argument that no addition was required if cash deposits are adequately explained through prior cash withdrawals and the rotation of funds: -

a) [1997] 93 TAXMAN 487 (PUNJ. & HAR.) HIGH COURT OF PUNJAB AND HARYANA *Wadhwa Ram v. Commissioner of Income-tax*

b) *Smt. Sanjeet Kanwar v. Income-tax Officer**[2022] 143 taxmann.com 266 (Amritsar - Trib.)

c) *Rajesh Mangla v. Deputy Commissioner of Income-tax**[2024] 162 taxmann.com 324 (Delhi - Trib.)

d) *Ajit Bapu Satam v. Deputy Commissioner of Income-tax**[2023] 147 taxmann.com 222 (Mumbai - Trib.)

e) *Shri Madhusudan Dhakad Hardav. Income-tax Officer**140 taxmann.com 666 (Indore - Trib.)

f) [2016] 76 taxmann.com 128 (Hyderabad - Trib.) IN THE ITAT HYDERABAD BENCH 'A' *S. Venkat Reddy v. Income-tax Officer, Ward-8 (2), Hyderabad**

g) [2013] 40 taxmann.com 533 (Andhra Pradesh) HIGH COURT OF ANDHRA PRADESH *Commissioner of Income-tax -VI, Hyderabad v. Purushottam Jhavar**

h) [2013] 38 taxmann.com 41 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'F' *Income-tax Officer, Ward -1 v. Pawan Kumar**

i) [2017] 83 taxmann.com 243 (Chennai - Trib.) IN THE ITAT CHENNAI BENCH 'D' *B. Jenson Thanaraj v. Assistant Commissioner of Income-tax, Company Circle 11(3), Chennai**

) [2004] 3 SOT 96 (RAJKOT) IN THE ITAT RAJKOT BENCH Income-tax Officer v. MaheshkumarJayantilalVora

k) [2004] 141 TAXMAN555 (RAJ.) HIGH COURT OF RAJASTHAN Commissioner of Income-tax v. Ishwardass Mutha

l) [2006] 99 ITD 227 (AHD.) IN THE ITAT AHMEDABAD BENCH 'C' Anand Autoride Ltd. v. Joint Commissioner of Income-tax (Asst.), SR-9

m) [2006] 157 TAXMAN 62 (MP) HIGH COURT OF MADHYA PRADESH, INDORE BENCH Mansukhlal Ratanlal Jain (Chopra) v. Union of India*

*n) [2007] 163 TAXMAN 585 (DELHI) IT APPEAL NO. 86 OF 2006 FEBRUARY 13, 2007 HIGH COURT OF DELHI Commissioner of Income-tax, (Central)-II * v. Kulwant Rai*

O) CIT (APPEALS AMRITSAR) Appeal no.152/IT/CIT(A)/ASR/2010-11 Income Tax Offcer V. Raj Partap Singh Bajwa

p) In the Income Tax Appellate Tribunal. Amritsar Bench ITA No.228 (ASR)1997 A.Y. 1993-94 Ashwani Aggarwal vs. Asstt. Commr. Of Income Tax

10. In ground No. 4 and 5, the learned AR challenged that the addition made by the AO on account of cash deposits u/s 68 was illegal and bad in law. The learned counsel submitted that the invocation of provisions of section 68 are bad in law since the assessee had filed return of income under the presumptive scheme of taxation i.e. u/s 44AD. It was argued that the provisions of section 44AD allow the assessee to declare income on a

presumptive basis without the requirement to maintain detailed books of accounts. It was further argued that provisions of section 68 can only be invoked in a case where the assessee maintains regular books of account which is not there in the instant case. In this regard the counsel relied upon the following judgment passed by the High Court and various tribunals, etc in which it has been held that addition cannot be made u/s 68 in a case where return of income is filed u/s 44AD.

- a) [2013] 35 taxmann.com 306 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Commissioner of Income-tax, Rohtak v. Smt. Kamlesh
- b) [2020] 113 taxmann.com 268 (Cochin - Trib.) IN THE ITAT COCHIN BENCH Thomas Eapen v. Income Tax Officer, Ward-5, Alappuzha
- c) 2020 (12) TMI 665 - ITAT CHENNAI SMT. SRIDEVI RAVI VERSUS THE INCOME TAX OFFICER, NON-CORPORATE WARD-14 (2) CHENNAI.
- d) [2023] 152 taxmann.com 185 IN THE ITAT JODHPUR BENCH Sumit Gahlot v. Income-tax Officer
- e) Dinesh Kumar Verma v. ITO (ITA NO. 1183/ MUM/ 2019 A.Y. 2014-15)
- f) DCIT Vs Kalpesh Kantilal Gada (ITAT Mumbai) I.T.A. No. 1531/Mum/2023
- g) Ankit Shankar Lal Tanwani Vs ACIT (ITAT Nagpur) I.T.A. No. 1531/Mum/2023
- h) Mahendra Kumar Vs NFAC (ITAT Bangalore) ITA No. 423/Bang/2023
- i) 11 Taxman 59 (Bom.) Commissioner of Income-tax v. Bhaichand N. Gandhi
- j) 2023 (3) TMI 356 - ITAT AMRITSAR SH. SATBIR SINGH BHULLAR VERSUS INCOME TAX OFFICER, WARD-5 (4), AMRITSAR

11. We have heard the rival contentions, perused the material on record, written submissions, and the impugned order. Admittedly, the case was selected for limited scrutiny regarding verification of the cash deposit from disclosed sources and the AO has confirmed the addition in respect of said cash deposit in two banks u/s 68 of the Act. It is seen that the assessee has regularly been filing return of income u/s 44AD and is engaged in the retail business of trading in hardware and ceramics items in name of proprietorship concern M/s Muble Impex from Hyder Pora, Srinagar.

12. From the record, it is noted that the AO while passing the order has accepted the return of income filed u/s 44AD in ITR/e-return U/s 44AD of the Act, filed on 16/05/2016. The AR has raised legal grounds that addition made for cash deposit u/s 68 is liable to be quashed in the absence of books of accounts. It is a settled law that the provisions of section 68 of the Income Tax Act 1961 are only applicable where the assessee is maintaining books of accounts. From the record, it is very much evident that provisions of section 68 cannot be invoked in the present case where the assessee has filed the return u/s 44AD and not maintaining books of account.

13. The Hon'ble HIGH COURT OF PUNJAB AND HARYANA in the case of Commissioner of Income-tax, Rohtak v. Smt. Kamlesh (Supra) has held that

where return of income filed by the assessee has been accepted and there was no finding that transactions entered into by assessee were not genuine, in such a case, no further amount could be made taxable.

14. In another case, the ITAT AMRITSAR in the case of SH. SATBIR SINGH BHULLAR VERSUS INCOME TAX OFFICER, (Supra) has followed the same view that addition u/s 68 cannot be made in the absence of books of accounts. In the instant case, the AO has accepted the return of income filed u/s 44AD and has not given any finding that the transactions entered into by the assessee were not genuine. Further, the assessee is registered with the Jammu and Kashmir Shops & Establishment Act 1966 and as such, there is no doubt regarding the business being carried out by the assessee. Therefore, the AO has erred in invoking provisions of section 68 while making the addition.

15. From the reconciliation statement furnished by the assessee, it is noticed that there are cash withdrawals from the same bank account which have not been considered by the Ld. CIT(A) while confirming the action of the AO, although the assessee has submitted the said reconciliation before CIT(A) and all the bank accounts along with relevant documents which were also submitted before us. In a judgment passed by Coordinate Bench in the

case of Smt. Sanjeet Kanwar v. Income-tax Officer (Supra) it was held that the assessee is ought to be given the telescoping benefit of withdrawals.

16. In the present case, since the assessee has furnished the requisite bank statements which showed that there were deposits and withdrawals of almost equal amounts and AO and the CIT(A) failed to give any findings regarding said withdrawals, and hence, the assessee deserved to get benefit of telescoping and thus, addition was unjustified.

17. In the above view and the judicial precedents, we hold that the order of the Ld. CIT(A) suffers from infirmity and perversity to the facts on record. Therefore, the addition confirmed by the Ld. CIT(A) on account of unexplained cash deposits is deleted.

18. ITA No. 317/Asr/2024:

Since the appellant assessee gets relief in quantum appeal in ITA No.316/Asr/2024 and hence, the consequential penalty of Rs. 3271507/- levied u/s 271(l)(c) by the AO would liable to be deleted. Thus, the penalty is deleted.

19. In the result, both the appeals of the assesseees in ITA Nos. 316 and 317/Asr/2024 are allowed.

Order pronounced in the open court on 10.09.2024

**Sd/-
(Udayan Dasgupta)
Judicial Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

True Copy

By Order