

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.56/Del/2024, A.Y. 2017-18

Padam Sarup Goel, C/O. Shri Kapil Goel Adv. F-26/124 Sector-7 Rohini, New Delhi 110085 PAN: AAUPG0421H	Vs.	Income Tax Officer, Ward 2(1), Faridabad Haryana
(Appellant)		(Respondent)

Appellant by	Shri Kapil Goel, Advocate
Respondent by	Shri Subhash Kumar, Sr.DR

Date of Hearing	02/09/2024
Date of Pronouncement	23/09/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2017-18 filed by the assessee is directed against the order dated 20.11.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, New Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds were raised in this appeal: -

"1. On facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming the addition of Rs.43,33,637/- made without any statutory provision dismissing appeal of assessee and

sustaining order of ld. AO (ITO Ward 2(1), Faridabad) is totally arbitrary, unlawful and contrary to mandate of 1961 Act without appreciating the facts and circumstances of the case;

2. On facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming the addition of Rs.43,33,637/- made by Ld. AO in discarding disclosed cash sales forming part of cash in hand out of books without rejecting such audited books of accounts without following the mandate of law;

3. On facts and circumstances of the case and in law the NFAC/CIT(A) erred in confirming the addition of Rs.43,33,637/- on mere surmises and conjectures without appreciating the correct facts of the case;

4. That impugned order of passed u/s 250 by NFAC/CIT(A), dismissing appeal of assessee and sustaining order of ld. AO (ITO Ward 2(1), Faridabad under section 115BBE qua addition of Rs. 43,33,637/- without prior invoking of any provision from section 68 to 69D in the assessment;

4.1 That provision of section 115BBE of 1961 Act are arbitrarily invoked qua stated cash deposits;

5. That impugned order of passed u/s 250 by NFAC/CIT(A), dismissing appeal of assessee and sustaining order of Ld. AO (ITO Ward 2(1) Faridabad are totally illegal, unlawful and contrary to mandate of 1961 Act for fatal infraction of binding CBDT Instruction No. 20/2015 dated 29.12.2015 for want of valid show cause notice (SCN) being issued;

6. That impugned order passed u/s 250 by NFAC/CIT(A) dismissing appeal of assessee and sustaining order of ld. AO (ITO Ward 2(1), Faridabad) are totally illegal as passed in violation of principles of natural justice;

That the appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”

2.1 In nutshell, the appellant/assessee has challenged the taxation of unexplained cash deposits aggregating to Rs.43,33,637/- in accordance

with the provisions of section 115BBE of the Income Tax Act, 1961 (hereinafter 'the Act').

3. The relevant facts giving rise to this appeal are that the appellant/assessee is a proprietor of Goel filling station Petrol Pump at Palwal, Haryana. He filed his Income Tax Return (hereinafter, the 'ITR') on 31.10.2017 declaring income of Rs.7,92,180/-. The case was picked up for scrutiny, under CASS, on the reasoning that the appellant/assessee had deposited substantial cash during the demonetization period which was abnormal than the deposits of pre-demonetization period. During the assessment proceedings, the appellant/assessee claimed that the cash deposits aggregating to Rs.43,33,637/- were nothing but the cash sales of petroleum products (diesels and petrol) and opening cash in hand as on 01.11.2016. However, the Assessing Officer (hereinafter, the 'AO') was not satisfied with the explanation of the appellant/assessee; therefore, the AO; observing as under, taxed the cash deposits aggregating to Rs.43,33,637/-:

“7.8 During the year under consideration, month wise cash sale of the assessee is varied, which is as follows:-

<i>Month</i>	<i>Cash Sales</i>	<i>Cash Deposited in Bank Accounts</i>	<i>Difference</i>
<i>May, 2016</i>	<i>1,02,02,633.85</i>	<i>1,08,98,100.00</i>	<i>-6,95,466.15</i>
<i>June, 2016</i>	<i>97,16,962.77</i>	<i>1,09,11,541.00</i>	<i>-11,94,578.23</i>

Nov., 2016	1,60,55,663.78	2,03,89,300.00	-43,33,636.22
March, 2017	52,84,542.37	63,14,800.00	-10,30,257.63

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10. The aforesaid submissions and comparative details of cash deposit submitted by the assessee itself indicating and shows that volume of cash deposit as compared to the immediate previous year in respect of demonetization period has increased manifold. Since, the assessee has failed to explain the reasons of sudden increase in the volume of its business which could fetch it huge currency notes which was declared not to be legal tender on 08.11.2016 evening, therefore, it can safely be inferred that Rs. 2,51,47,000/- are belonging to the unexplained money of the assessee from the undisclosed sources. However, he may be given benefit of the immunity provided by the Government to this trade.

11. Furthermore, the assessee is a proprietorship concern & dealing in Sale & Purchase of petroleum products. The assessee has deposited cash of Rs.1,93,11,900/- in his current and saving bank accounts respectively during the demonetization period maintained with State Bank of India, which strengthens the facts that the particulars of cash receipts were created with an ulterior motive so that the advantage can be taken at the latter stage of the assessment and realization from debtors, decrease in cash deposits and further decrease in sales/realization from the debtors so that it could become a part to explain the source of cash deposit.

12. In view of the foregoing discussions, submissions of the assessee, facts and material available on record, legal position of the Act, it is crystal clear that the assessee has completely failed to discharge his onus to prove the precise source of cash deposit which was lies upon him under the law. There was no justified reason and plausible explanation offered by the assessee that as to why he has created such a concocted story in respect of cash receipts and failed to explain the source of cash of Rs.1,93,11,900/- deposited in the current and saving bank accounts during the demonetization in the specified bank notes which were declared not to be legal tender from 08.11.2016 evening. In view of the above facts and evidences on records the contentions, submissions and arguments made by the assessee are ill founded.

13. *in the light of the above facts, it is established that the assessee has made concocted story just to explain the unaccounted/unexplained cash and in the absence of concrete evidence and plausible explanation, it is held that the assessee had failed to prove the precise source of cash deposited of Rs.43,33,637/- as tabulated here above in this order for the month of November, 2016. Hence the cash sale and cash deposited during the month & cash deposited on various dates in bank accounts maintained with State Bank of India and State Bank of Patiala has remained unexplained and unsubstantiated. Accordingly, it is held that the said unexplained/unaccounted money is liable to added back to the taxable income of the assessee. Accordingly, addition of Rs.43,33,637/- is made to the taxable income of the assessee on account of income earned from unexplained and undisclosed sources and the same is chargeable to tax u/s 115BBE of the Act. since the assessee has concealed the particulars of his income and furnished inaccurate particulars in respect of the amount as discussed here above in this order and being satisfied, in terms of section 271AAC(1) of the Act, is hereby initiated and accordingly, notice u/s 270 for penalty proceedings u/s 271AAC(1) of the Act, is being issued separately.”*

Besides the above addition of Rs.43,33,637/-, the AO also made disallowance of interest of Rs.3,61,743/- and addition of Rs.12,64,008/- as unexplained credits/deposits in the proprietor's capital account. Aggrieved, the appellant/assessee filed appeal before the Ld.CIT (A), who upheld the addition of Rs. 43,33,637/- only. The appellant/assessee is in appeal on sole issue of unexplained cash deposits of Rs.43,33,637/-.

4. The Ld. Counsel submitted that the AO has neither rejected the books of account nor doubted the genuineness of opening cash in hand shown in the balance sheet as on 31.03.2016. it was further submitted that the cash deposits of Rs.43,33,637/- during the demonetization period was sourced from cash sales and opening cash in hand, which

were duly disclosed in regular books of account. It was also submitted that since the entire cash sale had already been disclosed in the Profit & Loss Account and income embedded therein had already been offered for the tax; hence, taxing the sale consideration again as unexplained deposits tantamounted to double taxation. Our attention was also drawn to the fact that the AO, as detailed in para 7.8 of the assessment order, worked out negative cash of (-)Rs.6,95,466/-, (-)Rs.11,94,578/-, (-)Rs.43,33,636/- and (-)Rs.10,30,258/- in the month of, May, June, November, 2016 and March, 2017. However, out of the above negative cash balance, only the negative cash balance of (-) Rs.43,33,636/- of Nov., 2016 was treated unexplained. The AO had not given any proper justification for treating only the negative cash balance of (-) Rs.43,33,636/- of Nov., 2016 as unexplained. Further, the AO had also not allowed set off of the opening cash in hand though he had never questioned/doubted such opening cash in hand. The Ld. AR demonstrated with the help of cash flow statement that there were never negative cash balances in any of the months. Hence, the table prepared by the Ld. AO in the para 7.8 of the assessment order was not logical and justified. The Ld. AO had treated the cash sales of November, 2016 as abnormal, though he did not consider that the demonetization was also not a routine feature and the petrol pumps were permitted to sale petroleum products in cash in month of November, 2016 even during the

demonetization period, which resulted the abnormal cash sales and consequential cash deposits in the month of November, 2016.

5. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR') placed reliance on the AO and Ld. CIT(A)'s finding and prayed for dismissal of the appeal.

6. We heard both the parties and perused the material available on the record.

7. The issue before us is with respect to addition of Rs.43,33,636/- made on account of cash deposits during the demonetization period. It is an admitted fact that the appellant/assessee, running a petrol pump (petrol & diesel), has made cash sales as well as credit sales. It has maintained sales vouchers and filed VAT returns. We find force in the arguments/contentions/submission of the Ld. Counsel. There is no logic/justification on the part of the AO for preparing cash flow chart without giving set off of the opening cash in hand on beginning of each month and also in drawing the adverse inference in respect of negative cash balance for the month of Nov., 2016 and not for other months as mentioned above.

8. Before us, the Revenue has not placed any material on record to demonstrate that the details of cash sales and the opening cash in hand

on beginning of each month declared by the appellant/assessee are fictitious/bogus. The purchases are entirely from PSU. Further, the Revenue has also failed to place any material on the record to demonstrate that the VAT returns of the relevant year had not been accepted by the VAT Authority. Hence, following the reasoning given in the co-ordinate Bench decision in the case of Ramesh Kochar, ITA No. 171/Del/2022 dated 26.04.2022, we hereby hold that this case is squarely covered by the decision of Ramesh Kochar (supra). Accordingly, we are of the considered view that the addition of Rs.43,33,636/- under section 69A of the Act is uncalled for and the CIT(A) is not justified in confirming the same. Consequentially, we interfere with the order of the Ld. CIT(A) and delete the addition of Rs.43,33,636/-.

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

Order pronounced in open Court on 23rd September, 2024.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 23rd/09/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. CIT-DR

A.R., ITAT,
New Delhi