

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

Before Sh. N. K. Saini, AM and Sh. Laliet Kumar, JM

ITA No. 4080/Del/2015 : Asstt. Year : 2011-12

Income Tax Officer, Ward-54(5), New Delhi	Vs	Mr. Narender Kumar Handa, Q-24, Old Double Storey, Lajpat Nagar-IV, New Delhi-110024
(APPELLANT)		(RESPONDENT)
PAN No. AACPH0261N		

Assessee by : Sh. Sanjay Kumar, CA

Revenue by : Smt. Ashima Neb, Sr. DR

Date of Hearing : 09.07.2018	Date of Pronouncement : 14.08.2018
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 25.03.2015 of the Id. CIT(A)-18, New Delhi.

2. Following grounds have been raised in this appeal:

"1. Whether the CIT(A) has acted in gross violation of provision u/s 250 of the I.T. Act read with Rule 46A(1)&(2) by admitting additional evidence contrary to provisions thereto.

2. The CIT(A) has ignoring the fact Submitted during the course of assessment proceedings that assessee engaged in the business of trading of Fabrics in name N.K. Handa Textile & Co & reselling of Garments in name of N.K. Handa & Sons but as per Colum no. 8(a) of Audit Report in Form 3CD dated 26.09.2011 the auditor has stated" Under the Column nature of

business or professional that N.K. Handa Textiles & Co-Trading of Fabrics & N.K. Handa & Sons (Garments) - Trading of Garments.

3. Whether on the facts and circumstances of the case, the CIT (A) has erred in deleting the addition of Rs.81,50,175/- made on a/c of cash deposits despite of fact that the genuineness and creditworthiness of the same was not proved at the time of assessment.

4. Whether the CIT(A) has erred by ignoring that none of the invoices have details to whom the material had been sold. At the place of consignee only 'Cash' is written, which is not sufficient to verify the genuineness & creditworthiness of purchasers. Being an assessee whose accounts to be audited u/s 44AB of the I.T. Act is required to maintain details of all sellers/purchasers alongwith their addresses, PAN so that verification of genuineness of transaction can be done.

5. Whether the CIT(A) has erred by ignoring the cash deposits, deposited in rounded of Rupees in lakhs (000000) in the Bank A/Cs related to daily sales of "Export Surplus Fabrics" in the month of Feb 2011/March 2011.

6. Whether the CIT(A) has erred by ignoring that the assessee thus not utter a single word on maintenance of cash register. Besides not maintaining the cash register, the assessee also do not issue cash memo to purchasers and have not maintained any details that how much cash has received during the period.

7. The CIT(A) has ignored the fact that as per sl. no 28(a) of the Tax Audit Report of form 3CD, the assessee requires to stated "In the case of a trading

concern, give quantitative details of principal items of goods traded" wherein reported "Furnishing quantitative details are not possible as the assessee do not maintain stock Register" and during the course of assessment proceedings assessee replied that it is impossible to maintain a stock register even when he has purchased the export surplus fabric lot in mtrs & after sorting out lots the same have sold to petty vendors in mtrs as well as in kg.

8. The CIT(A) has erred admitting the submission made by the assessee during appellant proceedings, which were never submitted during the course of assessment proceeding which require details verification to ascertain Sales during the year are Rs 3,44,48,803/- out of which sales of Rs. 3,35,77,346/- are in cash. Cash sales so made have been deposited in overdraft a/c, C/A a/c & S/B with the Karur Vysya Bank Ltd., Kailash Bank Branch, New Delhi.

9. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of the appeal."

3. From the above grounds, it is gathered that the main grievance of the assessee in this appeal relates to the deletion of addition of Rs.81,50,175/- by the ld. CIT(A) made by the AO on account of cash deposits by admitting the additional evidences.

4. Facts of the case in brief are that the assessee filed his return of income on 30.09.2011 declaring total income of Rs.2,42,397/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 24.12.2011. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO observed that as per the AIR information, during

the year under consideration the assessee had deposited cash of Rs.81,50,175/- in his saving bank account maintained with Karur Vysya Bank Ltd. He, therefore, asked the assessee to explain the source of cash deposited in his bank account and also sudden shoot up of sales/purchase in the month of February, 2011. In response, the assessee submitted as under:

"That regarding source of cash deposits in Karur Vysya Bank Ltd., it is solely from sales proceeds, Further, the assessee also submitted that the reasons for shoot up of sales in the month of February, 2011, because the assessed is dealing in the Export Surplus Fabrics, Main buyers of the assessee are petty fabrication and shopkeepers. Sales of these fabrics ere never constant. It mainly depends on the order with the exporters."

4.1 Thereafter, the AO asked the assessee to produce each and every bills of cash alongwith name & contact details of the party concerned. In response, the assessee furnished sales accounts & invoice for the month of March, 2011. From the sales account and invoices submitted by the assessee, the AO observed as under:

"(a) All invoices are on plain paper and not on printed stationery as is the practice in normal courses of business.

(b) No details of "Quantity" of item "Export Surplus Fabric" supplied is mentioned in any of the invoice.

(c) None of the invoice has "Rates" on which- the material has been supplied. It may be noted that while purchasing goods from Dulari Exports Pvt. Ltd. vide retail invoice dated 04.02.2011, 24.01.2011, 17.01.2011, 10.01.2011, 05.01.2011 etc. all such details are mentioned, but while selling no such details has been quoted.

(d) None of the invoices have details to whom the material had been sold. At the place of consignee only "Cash" is written, which is not sufficient to verify the genuineness & creditworthiness of purchasers.

Being an assessee whose accounts to be audited is required to maintain details of all sellers/purchasers alongwith their addresses so that verification of genuineness of transaction can be done. However, no such details have been maintained in this case.”

4.2 The AO again asked the assessee to explain why stock register was not being maintained as indicated in the Audit Report and how the opening stock was calculated to the tune of Rs.2,46,17,357/- without maintaining a stock register. In response, the assessee submitted as under:

“That the assessee is having Opening Stock of Fabrics to the tune of Rs. 2,46,17,357/- as at 1st April, 2010. The assessee is not maintaining Quantity wise Stock Register as the assessee is dealing in export surplus fabric, wherein most of the time, purchase and sales are not in same unit of measurement. The assessee have purchased the export surplus fabric lot in Mts. and after sorting out the lots the same have sold the same to petty vendors in Mtr. as well as in Kg. In such circumstances maintaining Stock Register quantity wise not possible.”

A reference was also made to the remarks of the Auditor in Tax Audit Report wherein it was mentioned as under:

“Furnishing quantitative details are not possible as the assessee do not maintain stock register.”

4.3 The AO asked the assessee to produce cash book, copies of cash memo. In response, the assessee submitted that most of the goods were sold to petty vendors in cash which was deposited on various occasions in the Bank.

4.4 The AO was not satisfied from the submission of the assessee and observed that the assessee did not utter a single word on maintenance of cash register and had not maintained any details that how much cash was received during the period.

He, therefore, considered the deposits in bank account as an unexplained cash credit u/s 68 of the Act and made the addition of Rs.81,50,175/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the saving bank account in question could not have been treated/equated with the books of account of the assessee and that the sums found credited in such bank account could not be treated as unexplained cash credit within the meaning of Section 68 of the Act. It was further submitted that the bank account in question represented the duly disclosed bank account of the assessee and the same audited bank account was coming forward from the earlier year. It was stated that the source of deposits in the saving bank account could not be treated to be representing the unexplained cash credit or even the receipts from undisclosed sources because the same was referable to the sales as recorded in the books of M/s N. K. Handa Textiles & Co. dealing in fabrics, in support of the above, the assessee furnished the copies of the sales account as appearing in the ledger in which postings from cash book were recorded on the day-to-day basis and the deposits had been made into Saving Bank Account of the assessee. It was stated that the books were produced before the AO who never disputed that the sales shown in M/s N. K. Handa Textiles & Co., overwhelmingly covered the deposits in the said saving bank account. It was contended that similar deposits from the sale proceeds of fabrics appeared in the O.D. Bank Account with Karur Vysya Bank Ltd. about which there was no dispute and that the sales proceeds as had duly been disclosed by way of credits appearing in the relevant Profit and Loss Account, the AO could not have disputed the assessee's choice/action to route a part of his cash sales through his Saving Bank Account. It was submitted that the trading result as a whole which was a balancing figure of opening stock and

purchase on the left hand side and closing stock and sales on the right hand side of the Profit & Loss Account had been accepted and no discrepancy was found in the books of account produced before the AO. It was stated that the law does not require that in the cash memos, names of the purchasers should be mentioned, particularly when, the AO himself had mentioned that cash memos issued by the assessee were for very small figure. It was also stated that looking to the large number of varieties and variation in quality dealt with by the assessee, it was not possible to make a mention variety wise, in the cash memos and moreover, after accepting the sales as disclosed by the assessee, this issue too had become irrelevant, rather non-existent. Accordingly, it was submitted that the addition made by invoking the deeming provisions of Section 68 of the Act was not sustainable.

5.1 The Id. CIT(A) after considering the submissions of the assessee observed that the audited balance sheet of the assessee revealed that the said saving bank account stood reflected in the balance sheet and accordingly the entries in the saving bank account were appearing in the books of the assessee. He further observed that in the trading account of M/s N. K. Handa Textiles & Co., the sales of the assessee during the year were at Rs.3,44,48,803/-, out of which majority of sales i.e. Rs.3,35,77,346/- was in cash and balance sale of Rs.8,71,457/- was to other customers and as against the cash sales, the assessee deposited a sum of Rs.3,11,70,175/- (Rs.2,00,70,000 in Overdraft account in the name of N. K. Handa textiles & Co., Rs.29,50,000/- in current account in the name of N. K. Handa & Sons and Rs.81,50,175/- was in saving bank account of N. K. Handa which had subsequently been transferred mainly to the current account of N. K. Handa Textile & Co. so as to pay to its creditors for the purchases made. The Id. CIT(A)

categorically stated that the purchase made by the assessee were not disputed or doubted by the AO in any manner, therefore, under the circumstances the sales proceeds of such goods even if in cash could not have been said to be unexplained and added to the assessee's income u/s 68 of the Act. More so, when the cash deposited in the two other bank accounts were not doubted by the AO. Accordingly, the impugned addition made by the AO was deleted.

6. Now the department is in appeal. The ld. Sr. DR strongly supported the order of the AO and reiterated the observation made therein. It was further submitted that the assessee neither maintained the stock register nor produced any evidence and the ld. CIT(A) violated the Rule 46A of the Income Tax Rules, 1962. Therefore, the addition made by the AO was wrongly deleted by the ld. CIT(A).

7. In his rival submissions, the ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee maintained the complete details which were furnished to the AO vide letter dated 17.10.2013. A reference was made to page nos. 28 to 32 of the assessee's paper book which is the copy of the said letter wherein in para 6 it has been mentioned that the assessee was maintaining current account with Karur Vysya Bank Ltd. in the name of M/s N. K. Handa Textiles & Co. and copy of the said bank account were enclosed as Annexure-C. It was accordingly submitted that no new document or evidence was furnished before the ld. CIT(A), so there was no violation of Rule 46A of the Income Tax Rules, 1962 because all the documents were already available on the record of the AO. It was submitted that the AO accepted the cash sales and the majority of cash was deposited in overdraft account and current account, he only doubted the deposits in the saving bank account.

Therefore, the Id. CIT(A) was fully justified in deleting the arbitrary addition made by the AO.

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the assessee was the proprietor of M/s N. K. Handa Textiles & Co. and M/s N. K. Handa & Sons which is evident from page no. 2 of the assessee's compilation which is the copy of computation of income. Even in the copy of acknowledgment, the aforesaid fact has been mentioned. The assessee was maintaining current account and overdraft account in Karur Vysya Bank Ltd. and deposited the sale proceeds in those bank account. The assessee also deposited cash out of the sales in his individual saving bank account which was later on transferred to current account and OD account. The AO accepted the sales made by the assessee and also accepted the deposits in current account as well as over draft (OD) account from the cash sales, he only doubted the deposits in the saving bank account of the assessee. Copy of saving bank account is placed at page nos. 138 to 142 of the assessee's paper book, the AO doubted the cash deposits in the said saving bank account but has not doubted the transfer from the said saving bank account to other accounts through cheque. In our opinion, when the AO has not doubted the quantum of cash sales and accepted the deposits, out of those sales in current account and overdraft account maintained with Karur Vysya Bank Ltd. then there was no occasion to doubt the part of deposit from the accepted sales in the saving bank account of the assessee. We, therefore, considering the totality of the facts, are of the view that the Id. CIT(A) was justified in deleting the impugned addition made by the AO. In that view of the matter, we do not see any merit in this appeal of the department.

9. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 14/08/2018)

Sd/-
(Laliet Kumar)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 14/08/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR