

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.8001/Del./2018
Assessment Year 2015-2016

Mr. Pradeep Jain, Gurgaon – 122 017. PAN AAJPJ9467H C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi – 049.	vs.,	The Income Tax Officer, Ward-3(3), Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Rakesh Gupta, And Shri Somil Agarwal, Advocates.
For Revenue :	Shri S.L. Anuragi, Sr.DR

Date of Hearing :	03.06.2019
Date of Pronouncement :	04.06.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Gurgaon, Dated 29.06.2018, for the A.Y. 2015-2016, challenging the addition of Rs.11,22,090/- on account of cash in hand.

2. Briefly the facts of the case are that the return of income was filed declaring income of Rs.9,63,920/- on

13.12.2016. The case was selected for limited scrutiny for the reasons of cash deposit for demonetization period. As per information available with the A.O, during the demonetization period from 09.11.2016 to 30.12.2016, assessee had deposited cash amount in his bank accounts mentioned in para 3.1 of the assessment order i.e., Rs.8,49,000/- in Bank of Maharashtra, Palam Vihar, Gurgaon, Rs.9,49,000/- in Syndicate Bank, Kashmiri Gate, Delhi and Rs.10,49,000/- in Andhra Bank, Palam Vihar, Gurgaon. The assessee explained source of Rs.8,49,000/- out of earlier years income and remaining cash were explained to be retail sales made during the year. The A.O. in order to verify cash deposit of Rs.8,49,000/- out of earlier year's income, issued show cause notice to the assessee. The assessee filed copy of the ITR for A.Y. 2015-2016 declaring income of Rs.9 lakhs under the Head "Profits and gains from Business". Further, the assessee showed cash in hand of Rs.11,22,000/- as on 31.03.2015 in the balance sheet submitted during the course of assessment proceedings. As per assessee, he was engaged in the

business of trading of cloth at a small level. The goods were procured from local market, getting some small work done on the same, and packed nicely to make them look more beautiful and wearable. They were then sold in Gurugram. The assessee submitted that he had sold goods amounting to Rs.15,00,000/- during F.Y. 2014-15 and filed his ITR under section 44AD of the Act. The A.O. noted that according to assessee he did not maintain bills of purchase as the same were done in cash. All transactions were done in cash. The A.O. further noted that assessee has not furnished even a single bill/voucher in respect of sale and purchase. The assessee submitted a list of suppliers giving their names and addresses, but, no confirmations have been filed. The returns were filed subsequently. The A.O, therefore, inferred that the cloth business of assessee is totally bogus and does not exist at all. The explanation of assessee was called for as to why addition of Rs.15 lakhs should not be made because of absence of any proof of business activity and as to why the sale receipts of Rs.15 lakhs out of which assessee has claimed cash deposits

should not be treated as unexplained cash credit under section 68 of the I.T. Act. The A.O. after considering the reply of the assessee noted that assessee has submitted his balance-sheet for the year under consideration which proved that assessee has maintained his books of account, therefore, addition could be made under section 68 of the I.T. Act, 1961. The A.O. treated the same as unexplained cash credit in the shape of bogus sales and addition of Rs.15 lakhs was accordingly made.

3. The addition was challenged before the Ld. CIT(A). The assessee also pleaded that A.O. was not justified in making addition of Rs.15 lakhs because this figure has been adopted from assessee's submissions. At the most, if at all any addition is to be made, it could be made to the extent of cash in hand claimed by the assessee. The Ld. CIT(A), therefore, held that in these circumstances the A.O. was not justified in adopting receipts of Rs.15 lakhs to estimate the income of assessee under section 68 of the I.T. Act at Rs.15 lakhs. The Ld. CIT(A), further made the addition of Rs.11,22,090/- i.e., to the extent of cash in hand

which was considered as unaccounted. The addition was restricted to Rs.11,22,090/-.

4. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that assessee filed return of income under section 44AD of the I.T. Act, 1961, being a small trader. The assessee is not required to maintain any books of account, bills and vouchers for the same. The assessee filed list of customers who purchased goods from the assessee and also maintained list of parties from whom assessee made the purchases, copies of the same are filed in the paper book at Page Nos. 9-11 of the PB. He has submitted that cash sales cannot be added under section 68 of the I.T. Act. He has relied upon decision of Hon'ble Madras High Court in the case of CIT vs. Taj Borewells [2007] 291 ITR 232 (Mad.) in which it was held as under :

“Held, that the following striking features were present :
(a) since there were no books of account, there could be no credits in such books ; (b) it was the first year of assessment of the assessee; (c) the explanation offered

by the assessee-firm was not rejected and only the explanation offered by the partners was rejected. Unless and until the explanation offered by the firm was rejected and was found not genuine, the Assessing Officer could not invoke the provisions of section 68. The addition could not be made.”

4.1. He has referred to PB-7 which is balance-sheet ending on 31.03.2015 in which cash in hand of Rs.11,22,090/- have been shown. He has further submitted that balance-sheet is prepared on estimate basis without any maintenance of books of account. He has submitted that in subsequent A.Y. 2016-2017, A.O. has accepted the returned income under section 143(1) in which also assessee has declared income at Rs.9 lakhs under section 44AD of the I.T. Act. Copy of the same is filed on record. He has, therefore, submitted that there was no justification to treat cash in hand as unexplained credit.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. I have considered the rival submissions. The assessee has filed the return of income for assessment year under appeal declaring income of Rs.9,63,920/-, out of which, income was declared at Rs.9 lakhs under section 44AD of the I.T. Act, 1961. In subsequent A.Y. 2016-2017 also, assessee declared income under section 44AD of the I.T. Act which have not been disputed by the revenue authorities. The assessee filed details of sales and purchase before A.O. giving the names of parties, their telephone number and address. If the A.O. had any doubt about the same A.O. could have made direct inquiry from them. Since assessee declared return of income under section 44AD of the I.T. Act, therefore, there was no necessity for the assessee to maintain books of account or bills and vouchers of sales and purchase. At the most, A.O. could have doubted the quantum of the sales and could have enhanced the same, but, there was no justification to hold that the sales are bogus. Since copy of the balance-sheet is provided at assessment stage, it would not prove that assessee maintained books of account. The A.O. made the addition

under section 68 of the I.T. Act on account of bogus sales. Thus, it is admitted by the A.O. that there is no creditor in the books of account of assessee. If there is no creditor in the books of account of the assessee and that no books of account have been maintained, there is no question of considering it to be cash credit. The Ld. CIT(A) did not accept the view of the A.O. and on the basis of copy of the balance-sheet filed at assessment stage, taken the amount of cash in hand of Rs.11,22,090/- and made the addition. Copy of the balance-sheet is filed at page-7 of the paper book. In the liability side, assessee has shown capital account of Rs.20,28,123.75 ps. On the other side i.e., assets, assessee has shown investment, current asset, cash and bank balances, which also tally with the same amount of Rs.20,28,123.75 ps. This figure includes cash in hand of Rs.11,22,090/-. If the figure of Rs.11,22,090/- is taken-out of assets side, it would not tally the balance-sheet of the assessee. It is, therefore, clear that Rs.11,22,090/- is part of capital account of the assessee. These facts, therefore, show that there was no justification for the Ld. CIT(A) to pick-up

the figure of Rs.11,22,090/- for the purpose of making the addition on the basis of estimated balance-sheet filed at assessment stage. No evidence has been brought on record as to how the assessee maintained books of account in assessment year under appeal. The A.O. has specifically noted that case was selected for scrutiny because assessee had deposited cash in his three Bank Accounts, but, no addition have been made on account of such amount deposited in the Bank Accounts. There was thus, no basis for the authorities below to make any addition against the assessee. The explanation of assessee has not been found to be false. Learned Counsel for the Assessee, during the course of arguments rightly contended that assessee started retail business on cloth after his retirement. Since assessee is involved in small business activity and filed return of income under presumptive provisions under section 44AD of the I.T. Act, there was no justification to consider the sales of assessee to be bogus or to make addition of cash in hand as per details submitted by the assessee because A.O. did not bring any sufficient evidence on record to justify the

addition. I, therefore, do not find any justification to sustain the addition. I, accordingly, set aside the Orders of the authorities below and delete the entire addition.

7. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 04th June, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.