

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 194/DEL/2020
[Assessment Year: 2016-17]

NAVKAAR TRADERS,
3197, 232, GF,
CHANDER NAGAR,
TRI NAGAR,
NEW DELHI – 110 035
(PAN: AAFMN4226H)
[Appellant]

Vs. ITO, WARD-40(5),
CIVIC CENTRE,
MINTO ROAD,
NEW DELHI – 110 002

[RESPONDENT]

Assessee by: Ms. Aakriti Dhwan, Advocate
Revenue by : Sh. C.P. Singh, Sr. DR.

ORDER

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax [Appeals-14], New Delhi dated 28.11.2019 pertaining to assessment year 2016-17 on the following grounds:-

1. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition to the extent of Rs. 10,00,000/-.
2. On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating that the entire cash sales have been disclosed by the appellant u/s. 44AD of the Income Tax Act.
3. On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating that all the

cash sales were below Rs. 2,00,000/-, which does not require quoting of PAN.

4. On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating that the entire sales including the cash sales were duly reported in the VAT return and the appellant had collected and deposited VAT on the same.
5. On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is based on surmises, presumptions and conjectures as the addition to the extent of Rs. 10,00,000/- was confirmed solely on the basis of the pattern of cash deposit followed by the appellant.
6. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of cash sales to the extent of Rs. 10,00,000/- despite the fact that the purchases during the year have not been disputed.
7. On the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition without appreciating the bank statement, bank book, details of cash deposited in the current bank account, ITR, computation of income, stock register, details of cash sales, vat return, creditor confirmation, cash sales bills and other documentary evidences submitted by the appellant in support.
8. On the facts and circumstances of the case, the Ld. CIT(A) has erred in not appreciating that the

partnership was incorporated on 15.11.2015 and the first purchase was made on 03.1.2016 thereby there could not have been any sales effected prior to last quarter of 2015-16.

9. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. The brief facts of the case are that assessee filed its return of income electronically on 14.02.2017 declaring income of Rs. 39,480/-. Subsequently, the case of the assessee was selected under CASS for limited scrutiny to examine the issue of "Whether the cash deposits has been made from undisclosed sources". The assessee was engaged in the retail trading of jewellery. During the year under consideration, the AO noticed that assessee has deposited cash, amounting of Rs. 23,65,264/- in the bank account maintained with Yes Bank. Statutory notices were issued to assessee to furnish the details of cash deposits in the bank account and detail of name, address and PAN of the parties to whom sale was made in cash. In response, the assessee did not furnish any detail of name, address and PAN of the parties. Further, a final show cause notice dated 18.12.2018 was issued to substantiate the identity, genuineness and creditworthiness of the transactions. In reply of show cause, assessee submitted part submission which was not found satisfactory according to the AO and he completed the assessment at Rs. 24,04,740/- u/s. 143(3) of the Income Tax Act, 1961 (in short "Act") vide order dated 25.12.2018 by making the addition of Rs. 23,65,264/- on account of unexplained income from undisclosed sources. Against the assessment order dated 25.12.2018, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 28.11.2019 has partly allowed the appeal of

the assessee by directing the AO to restrict the addition amounting to Rs. 10,00,000/-. Aggrieved with the impugned order, assessee appealed before the Tribunal.

3. Ld. Counsel for the assessee submitted that Ld. CIT(A) erred in confirming the addition to the extent of Rs. 10,00,000/- and not appreciated that the entire cash sales have been disclosed by the appellant u/s. 44AD of the Income Tax Act. It was further submitted that Ld. CIT(A) also not appreciated that all the cash sales were below Rs. 2,00,000/-, which does not require quoting of PAN. It was further submitted that Ld. CIT(A) erred in not appreciating that the entire sales including the cash sales were duly reported in the VAT return and the assessee had collected and deposited VAT on the same. It was further submitted that Ld. CIT(A) has sustained the addition in dispute on surmises, presumptions and conjectures as the addition to the extent of Rs. 10,00,000/- was confirmed solely on the basis of the pattern of cash deposit followed by the assessee. It was further submitted that Ld. CIT(A) has erred in confirming the addition of cash sales to the extent of Rs. 10,00,000/- despite the fact that the purchases during the year have not been disputed. It was further submitted that Ld. CIT(A) has wrongly confirmed the addition in dispute without appreciating the bank statement, bank book, details of cash deposited in the current bank account, ITR, computation of income, stock register, details of cash sales, vat return, creditor confirmation, cash sales bills and other documentary evidences submitted by the appellant in support. It was the further submission that Ld. CIT(A) has erred in not appreciating that the partnership was incorporated on 15.11.2015 and the first purchase was made on 03.1.2016 thereby there could not have been any sales effected prior to last quarter of 2015-16. In support of her

contention, Ld. Counsel for the assessee filed a Paper Book containing pages 1-72 having various documentary evidences already filed before the lower authorities. In view of the above, she requested that the addition sustained by the Ld. CIT(A) may be deleted and appeal of the assessee may be allowed.

4. On the contrary, Ld. DR relied upon the orders passed by the revenue authorities.

5. I have heard both the parties and perused the records especially the orders of the authorities below and the submissions and the Paper Book containing pages 1-72 in which the assessee has attached the copy of assessment order dated 25.12.2018 for AY 2016-17 alongwith notice of demand and rectification request under section 154 of the Act; copy of the order dated 28.11.2019 passed by the Ld. CIT(A)-14, New Delhi; copy of the ITR and computation for AY 2016-17; copy of bank statement; bank book; details of cash deposited in bank; purchase details; credit confirmation; VAT return; VAT Surrender Certificate; Cash Sales Bills and Stock Register. I note that the entire cash sales have been disclosed by the assessee u/s. 44AD of the Income Tax Act where the assessee has shown gross receipts of Rs. 46,58,849/- including cash sale of Rs. 23,65,264/-. It is also noted that the entire sales including the cash sales were duly reported in the VAT return and the assessee had collected and deposited VAT on the same. However, the Ld. CIT(A) sustained the addition solely on the basis of the pattern of cash deposit followed by the assessee. It is further noticed that cash sales to the extent of Rs. 10,00,000/- during the year have not been disputed, however, Ld. CIT(A) has not properly appreciated the bank statement, bank book, details of cash deposited in the current bank account, ITR, computation of income, stock register,

details of cash sales, VAT return, creditor confirmation, cash sales bills and other documentary evidences submitted by the assessee. In view of above, I am of the considered opinion that assessee has fully discharged its onus and prove the identity, creditworthiness and genuineness of transaction by providing sufficient documentary evidences and despite that Ld. CIT(A) has only given partly relief and restrict the addition to the tune of Rs. 10,00,000/-, which is not tenable in law and in view of the facts and circumstances of the case, hence, the same needs to be deleted. Therefore, I hold and direct accordingly and allow the grounds of appeal raised by the assessee.

6. In the result, the Appeal of the Assessee is allowed.

The order pronounced on 17.03.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated:17-03-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi