

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.1185/Del./2021  
Assessment Year 2017-2018

Mr. Atish Singla, 201, Rajdhani Enclave, Pritampura, New Delhi – 110 034. PAN AVDPS8972K	vs.	The Income Tax Officer, Ward – 43 (7), Civic Centre, Minto Road, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri R.S. Singhvi, Advocate
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	29.03.2022
Date of Pronouncement :	06.04.2022

**ORDER**

This appeal filed by the Assessee is directed against the Order dated 23.07.2021 of the Ld. CIT(A), National Faceless Appeal Centre [in short "NFAC"], Delhi, relevant to the A.Y. 2017-2018.

2. Although a number of grounds have been raised by the assessee, however, the same relate to the order of the Ld. CIT(A) in upholding the addition of Rs.39,60,000/- made by the A.O. under section 68 of the I.T. Act, 1961.

3. Facts of the case, in brief, are that the assessee is an individual engaged in the business of trading of footwear. He filed his return of income on 30.11.2017 declaring income of Rs.6,36,270/-. The case of the assessee was selected for scrutiny for abnormal increase in cash deposit during the demonetization period as compared to pre-demonetization period. Accordingly, statutory notices under section 143(2) and 142(1) of the I.T. Act, 1961 along with generic/specific questionnaire/query was issued by the A.O. The assessee in response to the same filed details as called for from time to time.

3.1. During the course of assessment proceedings, the A.O. noted that the assessee is involved in the business of manufacturing and wholesale dealing of footwear in the name and style of M/s. A.N. International. From the perusal of the bank account filed by the assessee, he noted that there was regular cash deposit into the bank account. On being questioned by the A.O. to explain the source of such cash deposit, the assessee explained that this cash were received from debtors from 01.04.2016 to 08.11.2016.

However, the A.O. rejected the same on the ground that the last cash deposit before demonetization was made on 07.11.2016. Therefore, the claim of the assessee that he used to keep cash in hand for so long which was received from the debtors cannot be accepted. He, therefore, made addition of Rs.39,60,000/- to the total income of the assessee.

3.2. In appeal, the Ld. CIT(A), NFAC upheld the action of the A.O. by observing as under :

*“4.1. Ground No. 1 and 2 relates to addition made on account of cash deposit to the tune of Rs. 39,60,000/-:*

*The appellant is in the business of manufacturing and wholesale dealing of Footwear in the name and style of M/s A N International. The main issue in the appeal pertains to addition of Rs.39,60,000/- on a/c of cash deposit during demonetisation period in ICICI Bank, A/c No. 083001509292. It is an undisputed fact that the case was selected for examination of a specific issue - Abnormal increase in cash deposits during the*

*demonetization period as compared to pre-demonetization period. Perusal of facts and Assessment Order brings to point that during assessment proceedings notices were issued from time to time for seeking justification of the aforesaid cash deposits made. In response, appellant has claimed that the cash deposited during the demonetization period were received from debtors between 01.04.2016 to 08.11.2016 and same was deposited into bank during demonetization period. In support of the claim, the appellant produced his Bank A/c statement for the period under consideration and also prior and post periods depicting that the debtors used to pay cash to the appellant as part of business transactions and a mere sheet of paper depicting the parties constituting who paid cash payments to the appellant and the same allegedly claimed as source of cash deposits. Perusal of all these documents, the following discrepancies are found:-*

*a) The appellant has furnished list of debtors without specifying the date of receipts in support of source of cash deposit of Rs.39.60 lacs by way of 5 transactions during*

*15.11.2016 to 28.11.2016 at Delhi-Laurance Road Branch. No such trend has been found either in the last year nor in subsequent year.*

*b) The appellant failed to furnish any cash book showing the day-to-day receipt of cash as well as cash expenditure to substantiate the cash-in-hand as on 07.11.2016. Mere filing of details of cash deposit in bank and list of debtors from whom cash had been received do not prove the availability of cash-in-hand as on 07.11.2016.*

*c) Cash transactions in Bank Statement of ICICI Bank and the summary of cash deposited does not match. For example, the ICICI Bank statement shows cash deposited on 23.05.2016 & 14.09.2016 whereas in the summary of cash deposit in ICICI during FY 2016-17 does not show this deposit. Further, the month-wise cash deposit in ICICI bank in earlier year as well as subsequent year does not show cash deposit in such magnitude.*

*d) The appellant has not furnished any authentic documents to explain it's source of cash deposit such as (i)*

*identity & confirmations from debtors, (ii) cash book of current as well as last year & subsequent year to justify that such huge cash-in-hand is the feature of its cash book always, (iii) profit & loss accounts to justify its turnover in cash last year, current year and subsequent year, (iv) Balance Sheet to show the magnitude of sundry debtor as well as sundry creditors or source of granting such huge credit to sale parties, (v) details of receipts in cash and through cheque in the last year, current year and subsequent year, etc.*

*e) It is very strange to note that an amount of cash of Rs. 15.58 lacs was deposited in first 8 months during FY 2016-17, Rs. 39.60 lacs in one month during the same FY 2016-17 and no cash deposit in FY 2017-18 by the appellant.*

*f) The pattern of cash deposit transactions in ICICI Bank account shows substantial increase during demonetization quarter (i.e. Q3 of FY 2016-17). The details are as under:-*

<i>F.Y.</i>	<i>Quarter</i>	<i>Total Deposit Amount</i>	<i>Cash deposit by appellant as well as Parties directly in bank</i>
2015-16	Q1	4,29,700	40,000
2015-16	Q2	13,72,093	1,41,300
2015-16	Q3	42,34,768	16,18,300
2015-16	Q4	44,04,443	17,32,451
2016-17	Q1	10,92,313	2,19,300
2016-17	Q2	10,03,328	1,05,000
2016-17	Q3	78,24,200	41,30,000
2016-17	Q4	21,89,342	0
2017-18	Q1	0	0
2017-18	Q2	50,000	50,000
2017-18	Q3	3,60,000	60,000

*Analysis of bank statements for three years clearly indicate that huge cash deposit in quarter 3 of FY 2016-17, which lead to the conclusion that the cash deposited during demonetization period was not explained in nature and the appellant tried to justify by filing statement of sundry depositors without further documentary evidences. In fact, the appellant did not use this bank account after the cash deposits during demonetisation period.*

*g) Total deposit transaction during FY 2015-16 and 2016-17 is more than the tax audit limit but the appellant did not furnished any auditable financial statement to substantiate the declaration of nature of transactions and the outstanding opening debtors & opening creditors in financial statement.*

*h) Most of cash deposited during demonetisation period was utilized to transfer the money to SMFOOTWARE but the appellant did not furnished the nature of such payment with documentary evidence.*

*Keeping in view the above facts, the circumstantial evidences do not support the contention of the appellant. The Hon'ble Supreme Court has held in several cases such as Sumati Dayal [1995] 214 ITR 801(SC) that while deciding any issue surrounding circumstance/evidence and test of human probabilities should also be looked into. In the instant case, it is an undisputed fact that the appellant has made huge cash deposits during the demonetization period, which is found not a regular feature in earlier period as well as subsequent period in the instant case. Also, the appellant fails to substantiate its claim that these money were received from debtors without furnishing the day-to-day cash book and confirmations of cash*

*payment by these parties and the reason/purpose for keeping such huge cash of Rs. 39.60 lacs especially when the entire year transaction is around Rs. 1 crore only.*

*In view of the above facts and circumstances, I hold that the appellant failed to explain the source of cash deposits of Rs. 39.60 lacs during demonetisation period in ICICI Bank A/c, hence, addition on a/c of unexplained cash deposit is confirmed. Thus, this ground of appeal is dismissed.”*

4. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. Learned Counsel for the Assessee strongly challenged the order of the Ld. CIT(A) in confirming the addition of Rs.39,60,000/- made by the A.O. He submitted that the assessee has filed its return of income under presumptive taxation by applying the provisions of Section 44AD of the I.T. Act, 1961 after computing 8% profit on the gross sales of Rs.90,66,440/-. He submitted that cash deposit of Rs.39,60,000/- made during the demonetization period represents the sale proceeds and realization of debtors. Referring to pages 35 to 48 of the PB, the Learned

Counsel for the Assessee drew the attention of the Bench to the copy of cash book showing cash balance before demonetization period. He submitted that the cash deposit so made in the bank account arises out of two sources i.e., (a) cash sales made during the year and (b) an amount of Rs.38,32,509/- received from debtors standing recoverable on 01.04.2017. Referring to the RBI Gazette Notification dated 08.11.2016, he submitted that the currency note of Rs.500/- and Rs.1000/- were no longer a legal tender and it was directed that specified bank notes shall be deposited with the banks till the expiry of grace period i.e., 30.12.2016. He submitted that assessee has closed down its business during the year and outstanding transactions were realised and part of sale proceeds and recovery of outstanding debtors in cash were deposited in the bank account.

5.1. Even otherwise, he submitted that as per the details given in the comparative chart, cash transaction is regular feature of this trading business. The Learned Counsel for the Assessee drew the attention of the Bench to

Page 34 of the PB which gives a comparative chart of cash deposited during F.Y. 2015-16 and 2016-17 which are as under:

ATISH SINGLA (PROP: AN INTERNATIONAL)		
Cash deposit in bank for f.y. 2015-16		
Month	Cash deposit by self	Cash deposit by parties
APRIL	20,000	-
MAY	20,000	-
JUNE	-	-
JULY	-	-
AUGUST	37,400	-
SEPTEMBER	1,33,900	-
OCTOBER	6,29,000	2,30,000
NOVEMBER	5,58,700	-
DECEMBER	-	2,00,600
JANUARY	-	3,41,200
FEBRUARY	-	4,61,200
MARCH	1,59,000	7,71,051
<b>Total</b>	<b>15,58,000</b>	<b>20,04,051</b>

  

Cash deposit in bank for f.y. 2016-17		
Month	Cash deposit by self	Cash deposit by parties
APRIL	-	67,600
MAY	-	71,700
JUNE	-	80,000
JULY	-	25,000
AUGUST	-	30,000
SEPTEMBER	-	50,000
OCTOBER	-	-
NOVEMBER	39,60,000	1,70,000
DECEMBER	-	-
JANUARY	-	-
FEBRUARY	-	-
MARCH	-	-
<b>Total</b>	<b>39,60,000</b>	<b>4,94,300</b>

5.1. He submitted that the A.O. has not given any reasonable and justifiable basis for disputing the cash deposits made and arising out of sale proceeds and treated

the cash deposits made during the demonization period as unexplained without any valid logic and without taking into consideration demonetization notification.

5.2. So far as the allegation of the A.O. that assessee has not submitted any documents/details to establish the source of cash deposits made in the bank account is concerned, he submitted that the assessee has duly submitted the complete details of debtors along with PAN & Addresses along with few confirmations and, therefore, it is not known to the assessee as to why the A.O. has made this addition without appreciating the documents already on record. Learned Counsel for the Assessee referring to pages 49-50 of the PB drew the attention of the Bench to the chart showing the name, address and PAN of sundry debtors from whom cash payments were received during the A.Y. 2017-18. Referring to page nos.51-117 of the paper book, the Learned Counsel for the Assessee drew the attention of the Bench to the copies of the Ledger accounts and confirmations received from various debtors. Referring to page nos.13-18 of the paper book, the Learned Counsel for

the Assessee drew the attention of the Bench to the chart showing the purchases made during the year along with copies of ledgers of creditors. Referring to the following decisions, the Learned Counsel for the Assessee submitted that the addition made by the A.O. and sustained by the Ld. CIT(A) being not in accordance with law, should be deleted and the grounds raised by the assessee should be allowed.

1	CIT vs., Patel Natverlal Chinubhai & Co. [2014] 220Taxman 168 (Gujarat).
2.	DCIT vs., Sri R. Charuchandra [2017] 80 taxmann.com 182 (Karnataka HC).
3.	CIT vs., Smt. Bimla Rani [2015] 230 Taxman 629 (P & H HC).
4.	CIT vs., Jaora Flour and Foods (P.) Ltd., [2012] 344 ITR 294 (MP HC).
5.	Vijay L. Bhawe vs., ACIT [2017] 81 taxmann.com 138 (Mumbai-Trib.).
6.	Lalchand Bhagat Ambica Ram vs., CIT [1959] 37 ITR 288 (SC).
7.	Shree Sanand Textile Industries Ltd., DCIT [ITA.No.995/Ahd/2014 dated 06.01.2020 ITAT-Ahmedabad].
8.	M/s. Singhal Exim P. Ltd., vs., ITO [ITA.No.6520/Del./2018 dated 12.04.2019 ITAT-Delhi.].
9.	ACIT vs., Dewas Soya Ltd., Appeal No.337/IND/2012.
10.	Kishore Jeram Bhai Khaniya vs., ITO [ITA.No.980, 1220/Del./2011 dated 13.05.2014 ITAT-Delhi].

6. The Ld. D.R. on the other hand relied on the order of the A.O. and the Ld. CIT(A)

7. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A), NFAC and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the A.O. in the instant case made addition of Rs.39,60,000/- to the total income of the assessee on the ground that assessee could not explain the source of cash deposit made in the bank account during the demonetization period. I find the Ld. CIT(A), NFAC upheld the action of the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that cash deposited in the bank account represents partly the sale proceeds in cash and partly realization from debtors, for which, complete details were filed before the A.O. as well as the Ld. CIT(A), NFAC and without giving any justifiable reasons, the A.O. has made the addition which has been sustained by the Ld. CIT(A), NFAC and, therefore, the same is not in accordance with law. It is also his submission that when the assessee has opted for presumptive tax under section 44AD and the total sales as

declared by the assessee at Rs.90,66,440/- is much more than the cash deposits made in the bank account and when the assessee has realised an amount of Rs.38,32,509/- from the debtors standing recovered as on 01.04.2016, such addition made by the A.O. which has been sustained by the Ld. CIT(A), NFAC is not justified.

7.1. I find some force in the above arguments advanced by the Learned Counsel for the Assessee. Admittedly, the assessee has filed its return of income by opting for presumptive tax under section 44AD of the I.T. Act, 1961. Further the gross sales made during the year at Rs.90,66,440/- is not in dispute. The assessee has closed down its business during the subsequent year and assessee has filed the chart showing name and address and PAN of sundry debtors from whom cash payments were received during the A.Y. 2017-18, copies of which are placed at pages 49-50 of the PB which are not disputed by the lower authorities. Therefore, I am of the considered opinion that the A.O. should not have brushed aside the submission of the Counsel for the Assessee without bringing any other material

to rebut the same. I find the assessee has filed copies of ledger account and confirmations received from various debtors and also the chart showing the purchases made during the year along with copies of ledgers of creditors. Therefore, I find merit in the arguments of the Learned Counsel for the Assessee that without bringing any material to rebut the various details furnished by the assessee and considering the fact that assessee has opted for presumptive tax under the provisions of Section 44AD, the A.O. should not have made the addition.

7.2. I find the Coordinate Bench of the Tribunal in the case of Kishore Jeram Bhai Khaniya vs., ITO (supra) while deleting the addition under section 68 of the I.T. Act, 1961 made by the A.O. on account of cash deposit has observed as under :

*“There is another dimension to this issue. The Assessing Officer made addition of Rs. 22.06 lacs u/s 68 of the Act, which contemplates the making of addition where any sum found credited in the books of the assessee is not proved to the satisfaction of the A.O. It is only when*

*such a sum is not proved that the Assessing Officer proceeds to make addition u/s 68 of the Act. We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition.”*

7.3. Similarly, I find the Indore Bench of the Tribunal in the case of ACIT vs., Dewas Soya Ltd., (supra) has observed as under :

*“The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath Prasad [1969]*

*72 ITR 194 that "It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed. The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."*

7.4. I find the Coordinate Bench of the Tribunal in the case of M/s. Singhal Exim P. Ltd., vs., ITO (supra) while deleting the addition made under section 68 of the I.T. Act, 1961 made on account of cash deposit has observed as under:

*"9. Further, we find the stand of the Assessing Officer to be contradictory. On one hand, he mentioned the high sea sales to be not genuine and on the other, he has accepted the business income disclosed by the assessee. Admittedly, the business income disclosed by the assessee has been worked out after considering the purchases and sales of mobile phones. The sales included the high sea sales also. Once the Assessing Officer has accepted the trading results, he has*

*accepted the sales including high sea sales. Therefore, his stand while making the addition under Section 68 or 69C is contradictory to his stand taken while accepting the business income which is not permissible in law.*

*15. In view of the above, we hold that the Assessing Officer was not right in concluding that the high sea sales are not genuine. Moreover, Section 68 would also not be applicable in respect of recovery of sales consideration. Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realisation of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68 cannot be applied. In view of the above, we find no justification for upholding the addition of Rs.59,51,29,517/-. The same is deleted.”*

7.5. I find the Ahmedabad Bench of the Tribunal in the case of Shree Sanand Textile Industries Ltd., vs., DCIT (supra) while deleting the addition made by the A.O. under section 68

of the I.T. Act, 1961 on account of cash deposit has observed as under :

“9.3. Admittedly, the amount of sale as claimed by the assessee was offered to tax by reflecting the same in the trading and profit and loss account. This fact has not been doubted by the authorities below. However, the existence of the parties was not proved by the assessee based on the documentary evidence during the proceedings. Accordingly, the learned CIT (A) treated the amount received from such parties as unexplained cash credit under section 68 of the Act. In this connection we note that the impugned amount has been taxed twice firstly the same was treated as sales and secondly the same was treated as unexplained cash credit under section 68 of the Act. Even if we assume that the action of the learned CIT (A) is correct i.e. the impugned amount is representing the cash credit as provided under section 68 of the Act. Then, the learned CIT (A) was duty-bound to reduce the same from the amount of sales as the same does not represent the sale

*but unexplained cash credit. As such, the same amount cannot be held taxable twice as per the wish of the learned CIT (A). In our considered view the action of the learned CIT (A) is erroneous to the extent of treating the same as sale proceeds and the unexplained cash credit simultaneously.*

*9.4. However, we are also conscious to the fact that there is no allegation from the authorities below that the impugned amount represents the unexplained cash credit over and above the sale proceeds. We also find important to refer the provisions of section 68 of the Act which reads as under :*

*9.5 From the above, we note that the provisions of section 68 of the Act can be attracted where there is a credit found in the books of accounts and the assessee failed to offer any explanation or the offer made by the assessee is not satisfactory in the opinion of the assessing officer. The assessee has explained to the authorities below that the impugned amount represents the sale which has not been doubted by the authorities*

*below. Thus in our considered view, the impugned amount cannot be treated as unexplained cash credit under section 68 of the Act merely on the ground that the assessee failed to furnish the details of the existence of the parties.*

*9.6. We also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only.*

*9.7. We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him”.*

7.6. The various other decisions relied on by the Learned Counsel for the Assessee in the case law compilation and synopsis also support the case of the assessee to the proposition that when the nature and source of old currency notes is fully supported and substantiated, no addition under section 68 of the I.T. Act, 1961 can be made. In this view of the matter, I am of the considered opinion that the Ld. CIT(A), NFAC was not justified in sustaining the addition of Rs.39,60,000/- made by the A.O. on account of cash deposit in the bank account. I, therefore, set aside the order of the Ld. CIT(A), NFAC and direct the A.O. to delete the addition. Grounds raised by the assessee are accordingly allowed.

8. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court 06.04.2022.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Delhi, Dated 06<sup>th</sup> April, 2022

VBP/-

Copy to

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

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.