

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.171/Del./2022  
Assessment Year 2017-18

Mr. Ramesh Kochar, Prop. National Electric Co. WZ-78B, Basai Darapur, New Delhi. PIN – 110 015 PAN ABCPL6722B (Appellant)	vs.	The Income Tax Officer, Ward-45(1), Delhi. (Respondent)
---	-----	--

For Assessee :	Shri I.P. Bansal And Shri Vivek Bansal, Advocates
For Revenue :	Shri Om Prakash, Sr. DR

Date of Hearing :	11.04.2022
Date of Pronouncement :	26.04.2022

**ORDER**

This appeal filed by the assessee has been directed against the order of the National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No.ITBA/NFAC/S/250/2021-22/1037553518(1) dated 07.12.2021 relating to the A.Y. 2017-18.

2. The assessee is an individual stated to be engaged in the business of manufacturing of electrical wires and trading in electrical equipments, products etc. The assessee filed his return of income for the A.Y. 2017-18 on 31.10.2017 declaring total income of Rs.9,55,960/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed under section 143(3) vide order dated 07.12.2019 and the total income of the assessee was determined at Rs.47,55,460/-.

3. Aggrieved by the order of the A.O, assessee carried the matter in appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 07.12.2021 in Appeal No..ITBA/NFAC/S/250/2021-22/1037553518(1) granted relief to the extent of Rs.3 lakhs and upheld the balance addition.

4. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal and has raised the following grounds :

1. *That under the facts and in circumstances of the case, ld. CIT(A) has erred in law as much as in fact in upholding the addition of Rs.34,99,500/- out of addition of Rs.37,99,500/- made on account of alleged unexplained cash deposits in the bank of the assessee including the period of demonetization. The addition should have been deleted in its entirety as no part of the cash deposits could be treated as unexplained.*
  
2. *That under the facts and in circumstances of the case, ld. CIT(A) has failed to appreciate that the cash deposited in the bank account during the demonetization period was out of cash in hand generated through cash sales duly recorded in the books of accounts and also returned in the VAT returns in the regular course and the accounts of the Appellant are audited and no defect was found in the maintenance of the account. The turnover shown in the accounts includes cash sales and the turnover as per books of accounts has been accepted. Ld. CIT(A) has also failed to appreciate that all the details regarding*

*sale and purchase were duly furnished before the AO and no defect or discrepancy was found either in sales or in purchases which are duly supported by the invoices.*

- 3. That under the facts and in circumstances of the case, ld. CIT(A) has erred in law as much as in fact in upholding the application of section 69A of the Act on cash deposits representing cash sales. Cash deposits representing cash sales cannot be treated as unexplained. Application of section 69A of the Act on the addition is contrary to law and liable to be deleted.*
- 4. That under the facts and in circumstances of the case, ld. CIT(A) has erred in law as much as in fact in upholding the levy of tax as per provisions of section 115BBE of the Act. The addition is not liable to be assessed as income from other sources as it represents sale of goods in the regular course of business having been made out of available stock in hand.*

5. *That under the facts and in circumstances of the case and in law Ld. CIT(A) has failed to appreciate that the addition made by the AO doesn't attract higher rate of taxation under Section 115 BBE of the Act as the rate is applicable with effect from 1-4-2017. Therefore, it could not be applied to AY 2017-18 and is applicable from AY 2018-19.*
  
6. *That under the facts and in circumstances of the case and in law Ld. CIT(A) has failed to appreciate that the adverse finding recorded by the AO are perverse and have been recorded with pre-conceived notions and without consideration/application of mind on the submissions/evidences/material produced on record and are vitiated in law. The observations of the Ld. AO are factually incorrect and is in disregard of submissions made by the assessee which is supported by large evidence and material.*
  
7. *That under the facts and circumstances of the case learned AO has erred in law as much as in facts in*

*initiating penalty proceedings u/s 271AAC of the Act, the issuance of penalty notice may be held invalid.*

8. *That under the facts and circumstances of the case and in law the levy of interest u/s 234B and 234C is contrary to law and may be deleted. The appellant craved to amend or alter or add the accounts of appeal during the course of hearing or during the pendency of appeal.*
9. *That each of the above grounds is independent and is without prejudice to each other.*
10. *That appellant craves to add, alter, delete or modify any or all of the grounds of appeal on or before the hearing of the appeal.”*

5. Before me, the Learned A.R. of the assessee, at the very outset submitted that though the assessee has raised various grounds, but, the sole controversy which requires adjudication is with respect to the addition of Rs.34,99,500/- that has been upheld by the Ld. CIT(A) out of the total addition of Rs.37,99,500/- made by the A.O.

5.1. The A.O. in the assessment order has noted the copy of the AIR/CIB/26AS which was downloaded from the system, revealed that assessee had deposited cash of Rs.37,99,500/- in his bank account maintained with Citi Bank, Connaught Place Branch, New Delhi during the demonetization period i.e., 08.11.2016 to 30.12.2016. During the course of assessment proceedings, assessee was asked to furnish the details of all the cash deposits appearing in the bank account and explain the source of cash deposits. To the query of the A.O, the assessee, *inter alia*, apart from various other submissions stated that the cash deposits represents the sales revenue of the assessee. The submissions of the assessee was not found acceptable to A.O. A.O. noted that assessee has deposited cash during demonetization period and during the other period there were no cash deposits by the assessee. A.O. also noted that as per the details provided by the Bank, assessee had deposited cash in old currency denomination of Rs.500/- and Rs.1000/- notes aggregating to Rs.37,99,500/-. A.O, thus, held that deposits of cash during the demonetization

period to be unexplained and from undisclosed sources and according made addition of Rs.37,99,500/- under section 69A of the I.T. Act, 1961. When the matter was carried before the Ld. CIT(A), the Ld. CIT(A) granted relief to the extent at Rs.3 lakhs.

5.2. Before me, the Learned A.R. submitted that the cash deposits were out of the sales made by the assessee. He further submitted that the details of deposit along with sales register and VAT returns for the relevant period were also filed before the A.O. Before me the Learned A.R. of the assessee reiterated the submissions made before the authorities below and further pointed to the details of cash register for cash deposits which are placed at pages 34 to 36 of the paper book. From the details, he submitted that it has the details about the date of sale, the voucher number, the parties to whom sales have been made and the amount of sales. He thereafter pointed to the copy of the sales register of the relevant period which is placed at page numbers 47 to 51 of the paper book and from the sales register he submitted that the sales register shows the

details of the sales made along with VAT tax on such sale. He thereafter submitted that the total sales as reflected in the aforesaid sales register tallies with the VAT return for the relevant period filed with the Department of Trade and Tax, Government of Delhi and he pointed to the copy of the return filed which is placed at page-38 of the paper book and from the aforesaid he pointed to the turnover being matching with the sales register. He thereafter submitted that most of the sales have been made to identifiable parties, all the cash sales made have been declared in the VAT return. He thereafter on a sample basis pointed to some of the sales which are reflected in the cash register, the sales register, VAT tax on such sales. He further submitted that the accounts of the assessee are audited and no defect has been pointed out by the Auditor in the maintenance of the books of account and the books of account have not been rejected by the A.O. and in such a situation cash sales cannot be added to the income of the assessee under section 69A of the I.T. Act, 1961. He further submitted that the purchases made for effecting the

aforesaid sales has not been rejected by the Revenue and, therefore, the sales cannot be considered to be an unexplained. He thus submitted that on the facts and circumstances of the case, no addition is called for in the present case.

6. The Ld. D.R. on the other hand strongly relied on the order of the A.O. and the Ld. CIT(A). He further submitted that the case laws relied upon by the Learned A.R. of the assessee are distinguishable on facts and, therefore, not applicable to the present case. He thus supported the order of the Ld. CIT(A).

7. I have heard the rival submissions made by both the parties and perused the material on record. The dispute before the Tribunal is with respect to addition at Rs.34,99,500/- made on account of cash deposits during the demonetization period. It is an admitted fact that assessee is engaged in the business of trading of electrical wires and trading in electrical equipments, products etc. I find assessee has placed on record the details of cash sales made [a copy of which is placed in paper book] and it

contains the details namely the date of sale, the voucher number, the name of the party, the amount of sales. It is also an undisputed fact that on the aforesaid sales, VAT as per the applicable rates has been paid by the assessee and the payment of VAT is also reflected in the VAT returns filed by the assessee with the Department of Trade and Tax, Government of Delhi. Before me, Revenue has not placed any material on record to demonstrate that the details of cash sales filed by the assessee are fictitious or bogus. Further, the Revenue has also not placed any material on record to demonstrate that the VAT return filed by the assessee before the Appropriate Authorities have been rejected by the Authorities. It is also a fact that the assessee is having only one source of income which is also not in dispute. Further the purchase of goods from which the alleged sales have been made by the assessee has also not been rejected by the Revenue. I find that the Bangalore Bench of the Tribunal, on similar facts, in the case of Anantpur Kalpana, Gangavathi, Karnataka vs., ITO, Ward-1, Koppal in ITA.No.541/Bang/2021 order dated

13.12.2021 and after considering the decision of Kolkata Bench of the Tribunal and Visakhapatnam Bench of the Tribunal in the case of ACIT vs., M/s. Hirapanna Jewellers, Visakhapatnam in ITA.No.253/Vizag/ 2020 order dated 12.05.2021 has held that when the sales have been accepted as revenue receipt, the same could not have been again added as income. I find the issue in the present case is also covered by the aforesaid two decisions relied on by the Learned A.R. of the assessee. In such circumstances and in absence of any contrary material brought on record by the Department, I am of the view that in the present case no addition is called for. I, therefore, direct for deletion of the addition made by A.O. and upheld by the Ld. CIT(A).

**Thus, the ground raised by the assessee is allowed.**

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

Order pronounced in the open Court 26.04.2022.

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 26<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.