

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA No.501/Hyd/2021		
Assessment Year: 2017-18		
Sri Lateef Abdul Mohd. Hyderabad PAN: AXWPM7686H	Vs.	Income Tax Officer Ward 7(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri A. Srinivas, C.A	
Revenue by:	Sri Kiran Katta, Sr.DR	
Date of hearing:	24/05/2022	
Date of pronouncement:	10/06/2022	

ORDER

This appeal filed by the assessee is directed against the order dated 6.10.2021 passed by the National Faceless Appeal Centre (NFAC) Delhi relating to the A.Y 2017-18.

2. Although, a number of grounds have been raised by the assessee, however, these all relate to the order of the NFAC in sustaining the addition of Rs.30.00 lakhs made by the Assessing Officer u/s 69A being cash deposit in the Bank A/c during the demonetization period and addition of Rs.2.40 lakhs made by the Assessing Officer on account of low withdrawals.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 20.10.2017 declaring total income of Rs.11,39,450/-. During the course of assessment proceedings the Assessing Officer noticed that the assessee has

deposited an amount of Rs.30.00 lakhs in cash during the demonetization period in old denomination i.e. Rs.1000 currency notes in his bank a/c held with Indian Overseas Bank. On being asked by the Assessing Officer to explain the source of such deposit, the assessee explained the same as out of sale proceeds of the business. According to the Assessing Officer, since the old denomination currency i.e. Rs.1000 and Rs.500 notes were banned by the Govt. of India from 08/11/2016 midnight, therefore, the sale proceeds received in old denomination, as admitted by the assessee himself cannot be treated as receipt from the business. He, therefore, held that the amount to the tune of Rs.30.00 lakhs stand unexplained. From various details furnished by the assessee, the Assessing Officer noted the following date-wise deposit of old denomination notes in the bank:

S.No	Date of Deposit	No.of Rs.1000 notes	No.of Rs.500 notes	Amount (Rs.)
1	11.11.2016	1000	-	10,00,000
2	15.11.2016	1000	-	10,00,000
3	23.11.2016	1000	-	10,00,000
	T O T A L			30,00,000

4. Rejecting the various explanations given by the assessee, the Assessing Officer held that there was no sale to the extent of Rs.30.00 lakhs which the assessee explained to be the source of deposit made in the Bank A/c. The Assessing Officer therefore, rejected the book result and computed the net profit at Rs.12,27,647/-the details of which are as under:

Sales/Gross receipts of business as per R.O.I filed for the A.Y 2017-18	Rs.11,06,88,297
Less: Sale Proceeds in old denomination	Rs.30,00,000
Assessed sales/gross receipts of business as per RETURN OF INCOME filed for the A.Y 2017-18	Rs.10,76,88,297
Net profit calculated at 1.14% (on pro rata basis)	Rs.12,27,647/-

5. The Assessing Officer further noted from the capital a/c filed by the assessee that the assessee has shown withdrawals to the tune of Rs.7,40,508/-. According to the Assessing Officer, the drawings shown by the assessee is very low as compared to the expenditure claimed at Rs.24,96,743/- in the P&L A/c. He, therefore, made an addition of Rs.2,40,000/- to the total income of the assessee on account of low withdrawal. Since the Assessing Officer had reduced the sale proceeds in old denomination of Rs.30.00 lakhs, he made addition of the same u/s 69A of the I.T. Act. Thus, he determined the total income of the ass at Rs.43,79,450/-.

6. In appeal, the learned CIT (A) sustained the addition of Rs.30.00 lakhs made u/s 69A of the Act and the addition of Rs.2,40,000/- on account of low withdrawal by observing as under:

"I have carefully gone through the Assessment order, grounds of appeal, Statement of facts and written submissions of the appellant.

Now before me, in the course of appellate proceedings, the appellant has not furnished any concrete details regarding the cash deposit of Rs. 30,00,000/-. However, appellant has stated that "Your appellant submits that all the cash and bank transactions have been properly recorded in the books of accounts. Moreover, most of the sales of your Appellant are in cash and this cash is deposited periodically in the bank account with IOB, this fact is not disputed." Appellant has not given any proof of his claim like Books of Accounts, P&L Account, business receipt, advances from supplier's note, receivable note from the debtors, bills/vouchers and Cheque no. of depositors who have deposited in his accounts before me. During the appellant proceedings, cash book, Sale Register, cash deposit transaction and statement of IOB, form No. 3CB, form No. 3CD, Cash flow statement are produced before me but they are not sufficient to prove the contention of the assessee. I have gone through the sale Register, cash book and the Bank statement they do not help the case of the appellant. Cash sale has not been linked with bills and vouchers. On perusal of cash book it is seen that it is all prepared

as an afterthought to support the deposit of cash during demonetization period. Cash sale has not been shown as comparative sale in earlier years or later years. So all these are clearly on afterthought by the appellant. During the course of appellate proceeding, the appellant has not submitted balance sheet to prove the cash in hand which is deposited in bank account.

The onus is upon the assessee to furnish the concrete documentary evidence regarding the source of cash deposit. Here, the assessee has failed to furnish any documentary evidence regarding the source of cash deposit. Therefore, in the absence of any concrete details regarding the source of cash deposit of Rs. 30,00,000/- is remains as unexplained u/s 69A of the Income tax Act, 1961.

So far as added income of the appellant Rs. 2,40,000/- on account of low drawing. Appellant has to stated that "An amount Rs. 7,40,508/- i drawn for personal expenses". Appellant has not given any proof of his claim about his business expenditure and personal expenditure like bill/vouchers and certificate etc.

In the absence of documentary evidence the contention of the assessee cannot be accepted. Assessee has failed to correlate it.

Hence, the addition of the Assessing Officer is confirmed and the appeal of the assessee is dismissed."

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

8. The learned Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the addition of Rs.30.00 lakhs and Rs.2.40 lakhs respectively.

9. Referring to page 173 of the Paper Book, the learned Counsel for the assessee drew the attention of the Bench to the details of month-wise cash sales for the financial year 2015-16 which are as under:

Month & Year	Cash Sales
April, 2015	29,46,942
May 2015	44,88,299
June, 2015	45,74,203
July 2015	45,59,912
August 2015	37,54,374
September 2015	45,54,706
October 2015	62,24,166
November 2015	41,03,784
December 2015	33,44,261
January 2016	40,37,762
February 2016	34,41,077
March,2016	41,93,752
	5,02,59,238

10. Referring to page 174 of the Paper Book, he drew the attention of the Bench to the month-wise cash sales from 1.4.2015 to 8.11.2015:

Month & Year	Cash Sales
April 2015	29,46,942
May 2015	48,82,299
June, 2015	45,74,203
July 2015	45,95,912
August 2015	37,54,374
September 2015	45,54,706
October 2015	62,24,166
Nov. 2015 till 08.11.2015	8,59,884
	31,998,486

11. Referring to page 175 of the Paper Book, he drew the attention of the Bench to the details of cash sales from 1.4.2016 to 31.3.2017:

Month & Year	Cash Sales
April, 2016	42,35,445.00
May 2016	48,42,932.60
June, 2016	75,97,847.00
July, 2016	48,30,725.00
August 2016	54,99,673.00
September 2016	84,46,503.00
October 2016	73,09,041.00
November 2016	45,86,969.00
December, 2016	70,59,060.00
January 2017	89,42,716.00
February 2017	80,73,900.00
March 2017	78,23,539.00
	7,92,48,350.60

12. Referring to page 176 of the Paper Book, he drew the attention of the Bench to the details of cash sales from 1.4.2016 to 8.11.2016:

Month & Year	Cash Sales
April, 2016	42,35,445.00
May 2016	48,42,932.60
June, 2016	75,97,847.00
July, 2016	48,30,725.00
August 2016	54,99,673.00
September 2016	84,46,503.00
October 2016	73,09,041.00
Nov.16 till 08.11.2016	26,05,083.00
	4,53,67,249.60

13. Referring to page 177 of the Paper Book, he drew the attention of the Bench to the details of month-wise cash sales and cash deposits from 1.4.2015 to 8.11.2015:

Month & Year	Opening cash in hand	Cash sales	Cash deposited in Bank	Cash withdrawal from Bank	Closing cash on hand
April, 2015	4,23,945	29,46,942	37,77,350	-	3,38,780
May 2015	3,38,780	44,88,299	46,73,480	-	8,11,044
June 2015	8,11,044	45,74,203	51,31,200	-	6,80,933
July 2015	6,80,933	45,95,912	49,31,430	-	2,63,331
Aug. 2015	2,63,331	37,54,374	36,07,000	-	7,84,051
Sept.2015	7,84,051	45,54,706	48,89,500	-	7,67,309
Oct.2015	7,67,309	62,24,166	62,98,100	-	6,49,257
Nov.15 till 8.11.2015	6,49,257	8,59,884	17,99,830	-	3,03,862
	47,18,650	3,19,98,486	3,51,07,890	-	45,98,567

14. Referring to page 178 of the Paper Book, he drew the attention of the Bench to the details of month-wise cash sales and cash deposits from 1.4.2016 to 8.11.2016:

Month & Year	Opening cash in hand	Cash sales	Cash deposited in Bank IOB	Cash deposited in Bank SBI	Cash withdrawal from Bank	Closing cash on hand
April, 2016	8,61,689	42,35,445.00	-	77,02,600	-	10,60,184
May 2016	10,60,184	48,42,932.60	-	66,85,136	-	10,79,493
June 2016	10,79,493	75,97,847	-	81,06,640	-	14,43,356
July 2016	14,43,356	48,30,725	-	81,88,120	-	21,11,977
Aug. 2016	21,11,977	54,99,673	65,10,800	13,40,000	-	25,10,451
Sept.2016	25,10,451	84,46,503	89,60,000	5,73,988	-	30,60,469

Oct.2016	30,60,469	73,09,041	92,00,000	4,01,430	-	15,95,325
Nov.16 till 8.11.2016	15,95,325	26,05,083	14,00,000	72,000	-	28,60,665
	1,37,22,944	4,53,67,249.60	2,60,70,800	3,30,78,914	-	1,57,21,920

15. He accordingly submitted that the cash deposits made by the assessee in the Bank A/c during the period from 11.11.2016 to 23.11.2016 are commensurate with the sales made during the previous year and therefore, the same should not have been disbelieved.

16. Referring to the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Agson Global (P) Ltd reported in 441 ITR 550 (Del), he submitted that under identical circumstances, the Hon'ble Delhi High Court has dismissed the appeal filed by the Revenue, where the Tribunal had deleted the addition made by the Assessing Officer u/s 68 on account of cash deposits made by the assessee post demonetization since the assessee placed material on record to prove that the cash deposits made with the Bank were in correspondence with cash sales and growth in sales compared to the earlier two years show similar trend. Therefore, it could only be concluded that there was growth in assessee's business and therefore, the addition is to be deleted. He accordingly submitted that the order of the NFAC be set aside and the grounds raised by the assessee on this issue be allowed.

17. In so far as the addition of Rs.2,40,000/- by the Assessing Officer and upheld by the CIT (A) is concerned, he submitted that there is nothing on record before the revenue authorities that the assessee has spent more than what has been disclosed in the capital a/c towards withdrawals. The addition made by the Assessing Officer and sustained by the NFAC is purely based on surmises and presumptions. He submitted that

surmises and presumptions however strong may be, cannot be the basis for addition. He accordingly submitted that the order of the learned NFAC on this issue should also be set aside and the grounds raised by the assessee should be allowed.

18. The learned DR, on the other hand, relied on the orders of the Assessing Officer and the NFAC. He submitted that when the assessee himself has admitted that he has made cash sales during the demonetization period in old currency notes, which is illegal, therefore, the source of such deposits in the Bank A/c remains unexplained and therefore, the NFAC was fully justified in sustaining the addition made by the Assessing Officer. So far as the additions sustained by the CIT (A) on account of low withdrawal is concerned, he submitted that the withdrawal shown by the assessee in his capital a/c is very low as compared to the huge expenses claimed in the P&L A/c. Therefore, the order of the NFAC on this issue deserves to be upheld.

19. I have heard the rival arguments made by both sides perused the orders of the Assessing Officer and the NFAC and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the Assessing Officer in the instant case made an addition of Rs.30.00 lakhs being the cash deposits made by the assessee in old denomination of Rs.1000 currency notes during the demonetization period in his bank a/c maintained with Indian Overseas Bank. Similarly, the Assessing Officer made addition of Rs.2,40,000 on account of low withdrawals. I find the NFAC sustained both the additions, reasons of which are already reproduced in the preceding paragraphs. It is the submission of the learned Counsel for the assessee that the deposit of old currency notes in the Bank A/c is

out of the sale proceeds effected prior to the ban of currency notes i.e. from the midnight of 8/11/2016. It is his submission that a perusal of the month-wise cash deposits made by the assessee during the financial year 2015-16 and 2016-17 would show that such cash deposits made in the Bank A/c is commensurate with the sales made by the assessee in every month both during the preceding year and subsequent year. It is also his submission that the addition of Rs.2,40,000/- made by the Assessing Officer and sustained by the NFAC is purely on the basis of presumptions and surmises and therefore, the same deserves to be deleted.

20. I find sufficient force in above arguments made by the learned Counsel for the assessee. The month-wise cash sales and cash deposits made by the assessee in the Bank A/c are already reproduced in the preceding paragraphs. A perusal of the same shows that the cash sales made by the assessee during every month is substantial. Similarly, the cash deposit made by the assessee in the Bank A/c from April, 2015 to Nov.2015 and thereafter is also commensurate with the regular trend. It is not a case where the assessee in this particular period has made substantial cash deposits in the Bank A/c. Therefore, the lower authorities, in my opinion, have erred in disbelieving the submissions made by the assessee,

21. I find an identical issue came before the Hon'ble Delhi High Court in the case of Pr. CIT vs. Agson Global (P) Ltd (Supra). In that case, the Assessing Officer had made addition of Rs.99.04 crores to the total income of the assessee apart from other additions on account of cash deposits made during the demonetization period. In appeal, the learned CIT (A) restricted

the addition of Rs.73.13 crores. The Tribunal deleted the additions sustained by the CIT (A) of Rs.73.13 crores in respect of cash deposits made with the Bank during demonetization period. In appeal by the Revenue, the Hon'ble High Court dismissed the appeal filed by the Revenue by observing as under:

“17.6. Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record—which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act.”

22. Since the facts of the instance case are identical to the facts of the case decided by the Hon'ble Delhi High Court cited (Supra), therefore, I am of the opinion that the learned NFAC was not justified in sustaining the addition of Rs.30.00 lakhs made by the Assessing Officer in the Bank A/c during the demonetization period in old currency notes of Rs.1000. Accordingly, the order of the NFAC on this issue is set aside and the grounds raised on this issue are allowed.

23. So far as the addition of Rs.2,40,000/- made by the Assessing Officer and sustained by the NFAC is concerned, the same, in my opinion, is purely based on presumptions and surmises without bringing any material on record to suggest that the assessee has incurred more expenditure than what has been shown in the capital a/c towards withdrawals. There is nothing on record to suggest that the assessee has purchased any movable or immovable properties, incurred any expenditure for marriage, or any other function or is leading a lavish lifestyle. Since the addition is based purely on presumption and surmises therefore,

without bringing any material on record, such an addition, in my opinion, cannot be sustained. I therefore, set aside the order of the NFAC on this issue and direct the Assessing Officer to delete the addition.

24. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 10th June, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 10th June, 2022.

Vinodan/sps

Copy to:

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3	CIT (A)-National Faceless Appeal Centre, I.T. Deptt. Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order