



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT

ITA No.23/LKW/2022
Assessment Year: 2017-18

Sita Ram Rastogi Prop. M/s Shyam Jewellers Lakhimpur Kheri	v.	The ITO Ward 3(5) Lakhimpur Kheri
TAN/PAN:AGAPR6341R		
(Appellant)		(Respondent)

Appellant by:	Shri K. R. Rastogi, C.A.		
Respondent by:	Shri Harish Gidwani, D.R.		
Date of hearing:	05	09	2022
Date of pronouncement:	08	09	2022

ORDER

This is assessee's appeal against the order of the Id. CIT(A), NFAC, New Delhi, dated 26.11.2021, for the Assessment Year 2017-18, raising the following Grounds of Appeal:

1. That the learned Income Tax Officer made an addition of Rs.19,10,000/- as un explained cash deposit in the books maintained by the assessee whereas there is no such single deposit in the books.
2. That the additions of Rs.15,688/- and Rs.5,693/- have been made without any basis which are simply the guess work and therefore not justified.
3. That the learned Income Tax Officer has not pointed out any mistake or discrepancy in the books of account as is evident from his order in paras 3 to 6 and straight away made up his mind to make addition as is evident from his observation below para 6 of his order.
4. That the appellant had explained the availability of funds (Old SBN's), which was accepted by the Assessing Officer.

5. The Government had allowed the time to deposit in old Currency in Bank upto December, 2016 and the appellant had deposited the same within the time allowed.
6. That the main objection of the learned Assessing Officer was as to why the entire deposits were not made on a single day whereas there was no such binding of the appellant.
7. That the learned C.I.T. (Appeals) too confirmed the addition without properly considering the facts in a judicious way and without allowing proper opportunity which is quite illegal.

2. The Registry has pointed out that there is a delay of two days in filing of the appeal. The Assessee has filed an application dated 13.6.2022 for condonation of delay, stating therein that the date of order of the ld. CIT(A) is 26.11.2021, which was received by the assessee on the same day, and the Form No.36, i.e., the 'Form of Appeal to the Appellate Tribunal' along with other documents for filing of the appeal before the Tribunal, which was sent through Registered Post on 24.1.2022 and the same was received by the Registry of the Tribunal at Lucknow on 27.1.2022; that 26th January, 2022 being a Gazetted Holiday on account of Republic Day, there was a delay of two days in delivering the Dak; and that therefore, there is a delay of two days, which may be condoned.

3. In view of the above, we found that there was sufficient cause for delay in filing of the appeal. Accordingly, we condoned the delay and admitted the appeal for hearing.

4. The brief facts of the case are that the assessee is an individual and engaged in the business of jewellery in the name of M/s Shyam Jewellers, being its proprietor. The assessee filed

his return of income for the on 20.2.2018, declaring a total income of Rs.12,16,680/-. The Assessing Officer completed the assessment under section 143(3) of the I.T. Act by making various additions.

5. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who dismissed the appeal of the assessee, confirming the order of the Assessing Officer. Being further aggrieved, the assessee is in Appeal before us.

6. The Id. Counsel for the assessee at the outset submitted that Shri Anas Rasheed, Advocate of Lakhimpur, who was looking after the Income Tax matters of the assessee, was suffering from high blood pressure and was confined to bed for about 15 days, and therefore, neither he appeared, nor any written submission could be filed before the Id. CIT(A); and that the Id. CIT(A) has passed the order ex-parte qua the assessee.

7. On merit, apropos Ground no.1, relating to addition of Rs.19,10,000/- being unexplained cash deposit, the Id. Counsel for the assessee has submitted that the books of account are duly audited; that a copy of Audited Balance Sheet and Profit and Loss Account for the year ending 31.03.2017 [APB: 21 – 23] were furnished before the Assessing Officer; that in the course of the assessment proceedings, the Assessing Officer had issued notice under section 142(1) with detailed questionnaires dated 26.04.2019, 26.07.2019 and 11.09.2019 (APB : 24 – 34); that reply had been emailed, making due compliance of the same [copies of the replies dated 15.11.2019 and 28.12.2019 are at APB: 35 – 39]; that the books of account were produced and the details of Cash Deposits made during the year as well as during the demonetization period were furnished; that copies of VAT Returns, Comparative Chart of Gross Profit, Month-wise Stock

Summary with Value and Quantity, Copy of Bank Statement where cash were deposited, Copy of Sales Account and Copy of Purchase Account, Daily Sale Register, Ledger, Cash book, Stock Register, Purchase bills of Gold Jewellery and Silver Ornaments and Vouchers for Expenses were produced before the Assessing Officer; that all these details were duly examined by the Assessing Officer and no adverse view has been taken regarding the book results and sale and purchases made by the Assessee during the year; that the assessee had duly explained before the Assessing Officer that during the Demonetization Period, the assessee had deposited cash in the bank account being funds available in Cash Book as Cash-in-Hand, being the Sale Proceeds of Gold Jewellery and Silver items up to 08.11.2016; and that the details of Cash Deposit with I.C.I.C.I. Bank, Account No. 105405001144 at Lakhimpur are as under:-

Date	Amount
17.11.2016	9,90,000.00
18.11.2016	20,00,000.00
23.11.2016	19,10,000.00
TOTAL :	49,00,000.00

8. The Id. Counsel for the assessee has further contended that the Assessing Officer verified these details and accepted the Cash Deposits of Rs.9,90,000/- and Rs.20,00,000/-, deposited on 17.11.2016 and 18.11.2016 respectively; that he, however, made the addition of Rs.19,10,000/- deposited on 23.11.2016, solely on the basis that the cash deposits were made in the demonetization period in piece meal, without appreciating that there was a huge rush in the bank and it was very difficult to deposit the entire amount in one day due to such huge rush, and also for the security reason; and that the assessee had also

furnished the following details along with the replies before the Assessing Officer:-

- 1- Detail of Opening Stock with weight and Value, Purchases with Weight and Value, Sale with Weight and Value, Closing Stock with Weight and Value for Assessment Years 2015-16, 2016-17 and 2017-18.
- 2- Month wise Cash Sale and Cash Deposit for Assessment Year 2015-16, 2016-17 and Assessment Year 2017-18.
- 3- Cash Summary Month wise for Assessment Year 2017-18.
- 4- Copy of Sale Ledger.
- 5- Copy of Purchase Ledger.
- 6- Copy of Bank Statement with ICICI Bank Limited for Assessment Year 2017-18.
- 7- Copy of Quarter wise VAT Return for Assessment Year 2017-18.
- 8- Comparative G. P. and N. P. Rate.
- 9- Copy of Purchase and Sale Invoices.

9. The Id. Counsel for the assessee further submitted that since the Assessing Officer had not pointed out any defect in the books of account of the assessee, treating the part of cash deposits, i.e., of Rs.19,10,000/- as unexplained, is not justified.

10. The Id. Counsel for the assessee contended that the assessee had also furnished before the Assessing Officer the copies of Sale Bills along with Sale Register for the period between 01.10.2016 and 08.11.2016 and purchase ledgers along with details of the purchases made and had submitted that all the purchases made by the assessee were from registered VAT Dealers; and that the Assessing Officer had not doubted the purchases made by the assessee; that the availability of the

Stock of Gold and Silver Ornaments had also not been doubted by the Assessing Officer; and that therefore, the ld. CIT(A) was not justified in confirming the addition in a random manner. The ld. Counsel for the assessee has placed reliance on the following decisions:

1. 'ACIT vs. M/s Hirapanna Jewellers', ITA 253/VIZ/2020, order dated 12.5.2021
2. 'CIT vs. Associated Transport (P) Ltd.' [1996] 84 Taxman 146 (Cal.)
3. 'Lakshmi Rice Mills vs. CIT', [1974] 97 ITR 258 (Pat.)
4. 'Lalchand Bhagat Ambica Ram vs. CIT' [1959] 37 ITR 288 (SC).
5. 'Shri Shubhash Chandra Sharma vs. ITO-2(2)', ITA No. 327/Agra/2017, order dated 31.5.2019.
6. 'M/s Premier Car Sales Ltd. vs. ACIT', ITA No.450/LKW/2018, order dated 26.4.2019.
7. 'Shri Suresh Khatri vs. ITO', ITA No.781/LKW/2017, order dated 26.6.2020.

11. On the other hand, the ld. D.R. has contended that whole of the cash, during the demonetization period, should have been deposited by the assessee on a single day, instead of depositing the same on different dates; that the assessee failed to explain and substantiate the credits in the Bank accounts of the assessee; and that therefore, the action of the authorities below is justified and no interference is called for in their orders.

12. Heard. It is an undisputed fact that the assessee, during the demonetization period, had deposited amounts in

cash, totaling to Rs.49,00,000/-, on various dates, as detailed below, with ICICI Bank, in Account No. 105405001144:

Date	Amount
17.11.2016	9,90,000.00
18.11.2016	20,00,000.00
23.11.2016	19,10,000.00
TOTAL :	49,00,000.00

13. The assessee is engaged in purchase and sale of Gold Jewellery and Silver Ornaments, for which, Daily Sale Register, Ledger, Cash book, Stock Register, Purchase bills, etc., are being maintained and the same were produced before the Assessing Officer during the course of assessment proceedings. They were duly examined by the Assessing Officer. The assessee had explained before the Assessing Officer that during the Demonetization Period, the assessee had deposited the aforementioned cash in the bank account from the funds available in Cash Book, as Cash-in-Hand, being the sale proceeds of Gold Jewellery and Silver items, up to 08.11.2016. The assessee had also produced before the Assessing Officer the following documents/details:

- (1) Detail of Opening Stock with weight and Value, Purchases with Weight and Value, Sale with Weight and Value, Closing Stock with Weight and Value for Assessment Years 2015-16, 2016-17 and 2017-18 [APB: 40 – 42].
- (2) Month wise Cash Sale and Cash Deposit for Assessment Year 2015-16, 2016-17 and Assessment Year 2017-18 [APB: 43 – 44].
- (3) Cash Summary Month wise for Assessment Year 2017-18 [APB: 45].
- (4) Copy of Sale Ledger [APB: 46 – 80].
- (5) Copy of Purchase Ledger [APB: 81 – 83].

- (6) Copy of Bank Statement with ICICI Bank Limited for Assessment Year 2017-18 [APB: 84 to 87].
- (7) Copy of Quarter wise VAT Return for Assessment Year 2017-18 [APB: 88 – 118].
- (8) Comparative G. P. and N. P. Rate.
- (9) Copy of Purchase and Sale Invoices.

14. The Assessing Officer, on verifying the details so furnished by the assessee, accepted the Cash Deposits of Rs.9,90,000/- and Rs.20,00,000/-, deposited on 17.11.2016 and 18.11.2016, respectively. However, on a random basis, he made the addition, under section 68 of the I.T. Act, of the amount deposited on 23.11.2016, i.e., of Rs.19,10,000/-, on the presumption that the amount of Rs.19,10,000/-, deposited after a gap of five days from the date of the previous deposit on 18.11.2016, was generated in old SBNs during the demonetization period and was illegally accepted by the assessee.

15. For the sake of ready reference, we reproduce below section 68 of the I.T. Act:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:"

16. As per section 68, the sum found to have been credited in the books of account, for which, the assessee offers no explanation, is deemed to be the income of the assessee, whereas in the instant case, the assessee had duly explained the source of sales, produced the sale bills and had admitted the same as revenue receipt. Once there is no defect in the purchases and

sales and the same are matching with the inflow and the outflow of stock and cash, there is no reason to disbelieve the sales. The Assessing Officer had examined the requisite details furnished by the assessee and did not point out any mistake therein. The Assessing Officer had not doubted the Sales made by the Assessee, which sales stand duly disclosed in the monthly VAT Returns too. The VAT Returns of the assessee have never been revised/rectified after the demonetization and the VAT assessment of the assessee firm has been completed by VAT Officer, Commercial Tax Department, wherein the Sales, Purchases and Stock of the Assessee have been duly accepted. The Assessing Officer had accepted the Trading Results being Gross Profit and Net Profit and also the Audited Books of Account of the Assessee, which have been audited under section 44AB of the I.T. Act. The Assessing Officer had also not doubted the availability of Stock of Gold and Silver ornaments. The entries in the books of account of the assessee were found to be genuine by the Assessing Officer and the Balance in Cash and Sales were found matching with the books of accounts. The source and nature of cash had been duly explained by the assessee. The Assessing Officer made the addition merely on pure guess-work, without bringing on record any contrary evidence in support of his view that the amount of Rs.19,10,000/- deposited after a gap of five days from the date of previous deposit on 18.11.2016, was generated in old SBNs during the demonetization period and was illegally accepted by the assessee.

17. In 'ACIT vs. M/s Hirapanna Jewellers' (supra), on an identical issue, the ITAT, Visakhapatnam Bench, placing reliance on various judgments of the Hon'ble Supreme Court and High Courts, held that the cash receipts represent the sales which the

assessee therein had rightly offered for taxation; that there was sufficient stock to affect the sales in the trading account; and that since the assessee had already admitted the sales as revenue receipt, there was no case for making the addition under section 68 of the I.T. Act.

18. In the case at hand, we find that the assessee has established the sales with the bills. The sales were duly accounted for in the books of account. Therefore, the addition of Rs.19,10,000/- made under section 68 of the I. T. Act is not justifiable, as the amount was available with the assessee as opening balance of cash-in-hand as per cash book and cash received from the sales. Since these were Revenue Receipts, the same had also been offered to tax and due taxes had already been paid. The Assessing Officer had randomly made the addition, without pinpointing any abnormality therein. As such, the addition made by the Assessing Officer and confirmed by the Id. CIT(A) is not sustainable in the eye of law. Accordingly, I delete the same and allow Ground no.1 taken by the assessee.

19. Apropos Ground no.2, relating to additions of Rs.15,688/- and Rs.5,693/-, the Assessing Officer disallowed 15% of Rs.1,04,586/- on shop maintenance expenses and 15% of Rs.37,954/- on vehicle maintenance expenses and added the same to the income of the assessee.

20. It is trite that the Assessing Officer cannot, under law, make such unsustainable ad-hoc disallowances in the absence of any defect in the assessee's books. I notice that neither of the lower tax authorities had pointed out any voucher wherein the genuineness of the expenditure claimed to have been incurred by the assessee was not wholly and exclusively for the purpose of its business, nor was it the case of the Revenue that any part of the

expenditure in question was either found to be bogus, or fictitious. Evidently, there has been no clear finding as to the number of vouchers requiring denial of allowances with the amount of expenditure and nature of defects therein or therewith. Moreover, the Department could not bring out any material on record to substantiate its conclusion as logical. Also, there is no evincible rationale in arriving at the percentile of disallowance in the present case. Therefore, the ad-hoc disallowance made in an arbitrary manner cannot be held to be justified. The disallowances are deleted.

21. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 08/09/2022.

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:08/09/2022

JJ:

Copy forwarded to:

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

By order
Assistant Registrar