

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7045/Del/2019  
(Assessment Year : 2016-17)

Samunder Saree centre C/o Matta & Associates 877, Aggarwal Cyber Plaza-II, Netaji Subhash Place, Pitampura Delhi-110034 PAN : ABKFS2039J	Vs.	ACIT, Circle-47(1), New Delhi
Appellant		Respondent

Assessee by	Sh. Bipul Matta, CA
Revenue by	Sh. Abhishek Kumar, Sr. DR

Date of hearing:	06.10.2022
Date of Pronouncement:	17.10.2022

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Assessee against order dated 24.07.2019 in Appeal No. 10231/2018-19 assessment year 2016-17 passed by Commissioner of Income Tax (Appeals)-16, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 22/12/2018 u/s 143(3) of the

Income Tax Act, 1961 passed by ACIT, Circle -47(1), New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

2. The facts of the case are that the appellant, Samunder Saree Centre, is a partnership firm consisting of three partners named Mr. Shree Paul Jain, Mr. Rajit Jain and Mr. Sumit Jain. The appellant is engaged in the business of trading in sarees and suits. The appellant firm filed its return of income on 19.11.2016 showing return of income of Rs 25,36,880/-. The assessment was finalized on a total Income of Rs 56,23,454/, after making an addition of Rs 30,86,577/- under section 68 of the I.T. Act, 1961 and a demand of Rs 12,88,011/-, including interest of Rs 3,34,299/-, was created by ACIT, Circle 47(1) under section 143(3) of the Act vide orders dated 22.12.2018.

2.1 The appellant firm filed an appeal, which was disposed off by Ld. CIT(A)-16, New Delhi vide order dated 24.07.2019 and the appellant being aggrieved of this order, has preferred an appeal before this Tribunal raising following grounds of Appeal:-

*"1. That the Learned CIT (Appeals)-16 has grossly erred by approving the action of the Assessing Officer of making addition of Rs 30,86,577/- as unexplained cash credit and that too without rejection of books of accounts.*

*2. That the Learned CIT (Appeals)-16 has further erred by approving the action of the Assessing Officer of making double addition as the profit on sale has already been offered for taxation.*

*That the above grounds are without prejudice to each other.*

*The appellant craves leave to add, alter, amend or forego any of the grounds of appeal before or at the time of hearing."*

3. Heard and perused the record.

4. In regard to grounds it was submitted by the ld. AR that Ld. AO has adopted an arbitrary method to ascertain the cash in hand at the close of year by observing that as the sales increased by 10% during the year ending 31.03.2016

as compared to sales for year ending 31.03.2015, therefore, the cash in hand should have been increased in the same proportion. It was submitted that there is no mathematical formula to arrive at the cash at the close of year and the Assessing Officer has based assessment on surmises and conjectures. It was submitted that without pointing out any defect in the books of accounts, the same were disregarded. It was submitted that when the sales of the assessee were accepted and when they were duly offered for taxation then the cash sale cannot be considered to be unexplained credits u/s 68 of the Act. In this regard, he relied of judgment of Hon'ble Supreme Court of India in **CIT vs. Devi Prasad Vishwanath Prasad 1969 72 ITR 194 SC** and contended that where there is an explained cash credits and if the cash credit represents income which has already been taxed same cannot be taxed again.

4.1 He particularly explained in regard to lower net profits, that the net profit before interest and remuneration to partners for the year under consideration was Rs 51,19,150/- while it was Rs 40,32,764/- during the immediately preceding year. Thus, this profit for the year under consideration was 1.99% while it was 1.72% during the immediately preceding year. In fact, the GP ratio of the appellant for the year under consideration was 7.25% as compared to 5.9% during the immediately preceding year. The interest and remuneration paid to partners increased due to increase in GP ratio. Learned CIT(A) did not comment upon the above explanations of the appellant while passing the order and preferred to rely upon the baseless allegations of the assessing officer.

4.2 In regard to the allegation of sudden increased in cash in hand in March, 2016 it was submitted that in fact in certain other months of March, 2016 more cash was deposited then Rs. 30,00,000/- and details of same have been provided as page no. 41 of the paper book. It was thus, submitted that this summary reveals that the deposits in the month of March, 2016 were lower than the deposits in the month of September, 2015; October, 2015; November, 2015;

January, 2016 and February, 2016. Ld. AR submitted that in fact the cash flow is more during November to March in all financial years and for that purpose the cash flow of earlier year has been placed on record at page no. 42 of the paper book. It was submitted that even otherwise increased in cash flow in the month of March, 2016 was just more by 10% which is not required any adverse inference. It was submitted that these facts were duly put up to the tax authorities below but they were not considered.

4.3 It was submitted that the nature of business of the assessee is such where there is excessive cash sales and assessee had given an explanation for keeping ready cash as it intended to purchase some property and in fact the property was purchased on 09.03.2017 in the name of M/s. Lovy Jain, mother of partners Mr. Rajat Jain and Sumit Jain.

4.4 It was submitted that the Assessing Officer has made a baseless observation and has arbitrarily concluded that return was not filed before the due date i.e. 17.10.2016 and was filed after demonetization period to adjust unaccounted income. It was submitted that demonetization was announced on 08.11.2016 while due date for filing return date 17.10.2016 and assessee could not had preempted forthcoming demonetization and delayed the filing of return purposely.

5.1 Ld. DR however defended the orders of Ld. Tax Authorities and submitted that ld. AO had observed cash deposit of Rs. 1,52,82,500/- during demonetization was made and assessee had taken benefit of late filing of the return. Ld. DR submitted that AO had specifically confronted assessee as to why it having such high cash in hand while assessee was using over draft limit and assessee had given a vague reply of intention to purchase shop which was not substantiated. It was submitted that Ld. AO had considered all the

circumstances while discussing the same in para no. 9 of the assessment order and it is not merely and arbitrary or adhoc addition.

6. Giving thoughtful consideration to the matter on record, it will be appropriate to reproduce certain facts about deposit of cash by the assessee in the period 01.04.2014 to 31.03.2015 in comparison to period of 01.04.2015 to 31.03.2016 as made available by the assessee at page no. 42 and 43 of the paper book.

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SAMUNDER SAREE CENTRE 14-15			
<u>CONSOLIDATED LEDGER</u>			
FOR THE PERIOD FROM 01-04-2014 TO 31-03-2015			Page No. 1
MONTH	DEBIT	CREDIT	BALANCE
CASH			
OPENING BALANCE	1496044.00		
April	2731373.00	3847648.00	379769.00 Dr
May	3057898.00	3723609.00	285942.00 Cr
June	2527080.00	1616680.00	624458.00 Dr
July	1560013.00	1670748.00	613723.00 Dr
August	1556525.00	847388.00	1422860.00 Dr
September	2461192.00	1429814.00	2454238.00 Dr
October	3897181.00	4110816.00	2240603.00 Dr
November	5423544.00	5693077.00	1971070.00 Dr
December	5138532.00	2372318.00	4737284.00 Dr
January	5495393.00	5847287.00	4385390.00 Dr
February	3747780.00	2346541.00	5786629.00 Dr
March	5401179.00	3988260.00	7199548.00 Dr
TOTAL :-	44593734.00	37494186.00	
GRAND TOTAL :-	44593734.00	37494186.00	7199548.00 Dr

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SAMUNDER SAREE CENTRE SSC			
<u>CONSOLIDATED LEDGER</u>			
FOR THE PERIOD FROM 01-04-2015 TO 31-03-2016			Page No. 1
MONTH	DEBIT	CREDIT	BALANCE
CASH			
OPENING BALANCE	7199548.00		
April	2120667.00	518883.00	8601332.00 Dr
May	1688553.00	1059678.00	9430207.00 Dr
June	1683211.00	1316478.00	9796940.00 Dr
July	1266783.00	1493596.00	9570127.00 Dr
August	1375010.00	1763879.00	9181258.00 Dr
September	1848944.00	3854757.00	7175445.00 Dr
October	2548929.00	4793135.00	4931239.00 Dr
November	3710062.00	4853052.00	3778249.00 Dr
December	4095337.00	2277222.00	5596364.00 Dr
January	5092412.00	4669353.00	6019423.00 Dr
February	5043567.00	3138881.00	7924109.00 Dr
March	6023720.00	2944535.00	11003294.00 Dr
TOTAL :-	43696743.00	32693449.00	
GRAND TOTAL :-	43696743.00	32693449.00	11003294.00 Dr

7. Further, the details of cash deposited during the period 2015-16 is also reproduced as below :

SAMUNDER SAREE CENTRE CASH DEPOSITE IN BANK DETAIL (PERIOD 15-16)		
DATE	PARTICULARS	AMOUNT
May 2015	BA BY CASH DEPOSIT	600000
June 2015	BA BY CASH DEPOSIT	850000
July 2015	BA BY CASH DEPOSIT	1050000
August 2015	BA BY CASH DEPOSIT	1350000
Sept 2015	CA BY CASH DEPOSIT	3400000
Oct 2015	BA BY CASH DEPOSIT	4100000
Nov 2015	BA BY CASH DEPOSIT	4050000
Dec 2015	BA BY CASH DEPOSIT	1600000
Jan 2016	BA BY CASH DEPOSIT	4200000
Feb 2016	BA BY CASH DEPOSIT	2700000
March 2016	BA BY CASH DEPOSIT	2500000
		<b>26600000</b>

8. Ld. AO had questioned the assessee specifically with regard to cash sales made in the month of March and was not satisfied with the details of parties given and concluded that assessee was trying to hide its unaccounted income in the form of bogus sales. In para no. 9(4), AO mentioned that analysis of cash sales to various parties showed that majority of cash sales is in the amounts of exactly Rs. 20,000. Accordingly, concluded that the bills are manipulated. Ld. AO mentions in para 9(5) that when attempt was made to verify the cash sales to various parties, the addresses were found incomplete or the notices of majority were returned back unanswered and the parties who replied could not verify the amount of transaction done by them with the assessee firm. Thus, concluded the sales were bogus and held that assessee has introduced unaccounted income in the books of assessee as cash in hand and thereafter considering that the turnover of assessee had increased by 10%, applied

proportionate increased ratio to the cash balance and concluded that the actual cash balance was Rs. 1,10,03,294/- instead it should be Rs. 79,16,717/- and concluded that additional cash balance of 30,86,577/- is assessee's own unaccounted income and error u/s 68.

9. Now, what can be concluded from the order of Ld. AO is that he accepted the turnover of assessee at Rs. 25,66,89,398/- and from that has arbitrarily disbelieved cash balance of Rs. 30,86,577/- as unaccounted income. The assessment order gives no clue as to why when all cash sales in the figures of Rs. 20,000/- each were considered to be doubtful then why by applying rational of assuming 10% possible increase in cash balance over the previous year, addition was restricted to Rs. 30,86,577/- only.

10. The aforesaid details of the cash deposits and balances provided by the assessee in PB for the present and previous FY show that assessee has been depositing cash of high denominations every month. There is no strange or eye opening deposit or balance. The comparison of deposits over the year show that in the month of March there is usually high deposit as compared to other months of the year.

11. Then Assessee had taken a very consistent plea that as it intended to purchase a property they were keeping ready cash and Ld. AO has discarded the claim by following observation in para 9(2) :

*“2. Moreover, no documentary proofs regarding intention to purchase a shop from 2-3 years could be given by the assessee. It is a common man's understanding that if such an intention to purchase a property is there, the parties enter into an agreement and an advance is given to block the purchase, else the price of property keeps on increasing. No one keeps on accumulating cash with the intention to purchase a property in next 3 years without even entering into an agreement and forwarding an advance. No such agreement was*

*entered into by the assessee and no documentary proofs provided.”*

11.1 Ld. CIT(A) has also discredited this claim by following observations :-

- *“The appellant's contention that cash was stashed in the office and in the shop is not established.*
- *The appellant's claim that cash-in-hand of Rs 1,10 was sourced from business sales is not authenticated. Notices u/s 133(6) to sellers were returned or remained uncompiled with.*
- *The property for which the cash was being ostensibly accumulated was purchased by the mother of the partners and not by the partners of the concern.*
- *The purchase was made in March 2017 for Rs 95,00,000/- and requirement of accumulating cash-in-hand of Rs 1.10 crore in March 2016 seems improbable.*
- *To establish the claim that the investment was sourced from the concern, the appellant produced a copy of the loan account of mother in his books which shows only a credit of about Rs 11,00,000/- during the year 2016-17. This does not in any way establish or prove the claim of the appellant that investment of mother was sourced from the concern and that the cash-in-hand was high because cash was being accumulated for the said investment.”*

12. On behalf of the assessee it is submitted that on 09.03.2017 a property has been purchased in the name of Mrs. Lovy Jain, mother of partners Mr. Rajat Jain and Sumit Jain. The loan account of Lovy Jain is made available at page no. 45 of the paper book which shows that a sum of Rs. 44.23 lakhs and Rs. 65 lakhs were paid to M/s. Lovy Jain on 28.02.2017 and 02.03.2017 respectively. Sale of property vide a sale deed dated 9.3.17 for Rs 95,00,000/- is not disputed as same has been reflected in the order of Ld. CIT(A). The Bench is of considered opinion that Ld. Tax Authorities themselves seems to have stretched too far their discretion in discrediting a possible defense of assessee. Only on the basis of common man's understanding, a businessman's rationality for managing the cash funds and flow cannot be discarded.

13. Then the purchases and other accounts were not disbelieved and merely some part of cash sales has been discarded on surmises and conjectures that assessee was not able to satisfy the Ld Tax Authorities below as to why it preferred to hold so much cash. The deposit of cash having nexus with demonetization is not at all established as it is apparent that assessee was having a flourishing and running business throughout the year. Holding cash is not sin when a business is of such nature that most of the transactions are preferred in cash by the customers themselves. Merely because most of the cash sales were of Rs 20,000/- and could not be verified from customers that cannot be basis to discredit some part of cash sales without substantiating it with other corroborative material from the books that such sales were not possible or were beyond the means of assessee. In **Shree Sanad Textiles Industries Ltd. V. DCIT, Ahmedabad Bench of ITAT in ITA No. 1166/Ahd/2014** has held;

*”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.”*

Assessee had thus discharged its burden sufficiently that so called unexplained cash credits represents income and it is income from a source which has already been taxed.

14. Thus, the bench is of firm view that that Ld. Tax Authorities below have fallen in error in making addition u/s 68 of the Act. **The grounds are sustained and the appeal of assessee is allowed.**

**Order pronounced in the open court on 17<sup>th</sup> October, 2022.**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:-17.10.2022*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI