

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 252/JP/2022
निर्धारण वर्ष/Assessment Year : 2017-18.

Income Tax Officer, Ward 4(5), Jaipur.	बनाम Vs.	Shri Ashu Varma S-19, Khasra No. 501, Central Spine, Jagatpura, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ACPV 6537 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl. CIT)

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख / Date of Hearing : 15/09/2022

उदघोषणा की तारीख / Date of Pronouncement : 30/11/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the revenue is directed against the order dated 26.04.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act, 1961 for the assessment year 2017-18. The grounds raised by the revenue is as under :

1. Whether on the facts and circumstances of the case and in law, the CIT (A) was justified in deleting the addition of Rs. 2,62,81,530/- made by the AO by applying the provisions of section 69A of the Income Tax Act, 1961.
2. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing.

2. The brief facts of the case are that the assessee is an authorized dealer of Hindustan Petroleum Ltd and is running a petrol pump in the name of M/s. Verma Filling Station at Mahal Road, Jagatpura, Jaipur. He filed his return of income on 30.10.2017 declaring total income of Rs.10,36,430/-. In course of assessment proceedings, the A.O vide notice dated 23.08.2019 (**PB1-4**) required the assessee to furnish the details of cash deposited during demonetization period. In response to the said notice, the assessee submitted his reply dated 10.09.2019 (**PB5-9**). Thereafter, again vide notice dated 16.11.2019 (**PB12-15**), the AO required the assessee to furnish various details comprising of 31 points and also details in relation to cash deposited during demonetization period vis-à-vis the earlier years. The assessee vide reply dated 26.11.2019 (**PB16-22**) furnished all the required details. The AO after considering the reply filed by the assessee at Page 2 of the assessment order observed that assessee has deposited cash of Rs 2,62,81,530/- in the bank account during demonetization period i.e. between 09.11.2016 to 31.12.2016. The assessee has not made any cash deposit in the bank account in the period earlier and subsequent to the demonetization period. The cash in hand/debtors as on 31 03.2016 is Rs.6,60,373/- whereas cash in hand/debtors as on 08.11.2016 is Rs.6,11,399/-. The assessee has also not produced any books of accounts. Thus the assessee has failed to explain the source of cash deposit of Rs.2,62,81,530/. Accordingly, the A.O treated the cash deposit of Rs 2,62,81,530/- in the bank account during demonetization period as unexplained under section 69A of IT Act and made addition for the same. Aggrieved by the order of AO, the assessee preferred appeal before Id. CIT (A). The Id. CIT (A) after reproducing the

submission of assessee at Para 3.2, Page 2-4 of his order deleted the addition as per the findings given at Para 5 to 5.5, Pg7-10 of his order.

Now the revenue is in appeal before the Tribunal.

3. The sole ground of the revenue is challenging the order of the Id. CIT (A) in deleting the addition made by the AO by applying the provisions of section 69A of the IT Act.

4. Before me, the Id. D/R submitted written submissions as under :

“ In para 5.1- the Id. CIT(Appeal) says that Rs. 77,80,030/- is the correct amount and is not of demonetized currency. In this regard, it is submitted that as per assessment record, there is no any reply and documentary evidence in support of assessee's above claim during the assessment proceedings completed on 03.12.2019. However, as per assessment record it is noticed that that the A/R of the assessee has submitted reply dated 11.12.2019 (after completion of assessment proceedings) containing that 'out of total deposits of Rs. 2,62,81,530/- during the demonetization period, an amount of Rs. 77,88,030/- deposited in the bank account is not demonetized currency.' It is further submitted that while completing the assessment proceedings on 03.12.2019, the AO had made addition of Rs. 2,62,81,530/- on account of undisclosed cash deposited in assessee's bank accounts during the period of demonetization i.e. from 09.11.2016 to 30.12.2016. As per record, no any remand report in this respect has been called for by the Id. CIT(Appeal).

In para- 5.2- the Id. CIT(Appeal) says that substantial cash deposit were made prior to demonization period and also after demonetization period. In this regard, it is submitted that on the basis of written submission / reply of the assessee dated 26.11.2019 placed on record, it was noticed by the AO that there were shown cash deposits of Rs. 1,87,67,530/- and Rs. 75,14,000/- in State Bank of India and in Axis Bank respectively from 09.11.2016 to 31.12.2016. Accordingly, the AO had made addition of Rs. 2,62,81,530/- on account of undisclosed cash deposited in

assessee's bank accounts during the period of demonetization i.e. from 09.11.2016 to 30.12.2016. As per record, there was no any entry of cash deposits found in the assessee's bank accounts in prior as well as after the demonetization period during the course of assessment proceedings completed on 03.12.2019.

In para 5.3- the Id. CIT(Appeal) says that AO did not given any clear cut date to assessee to produce books of account. In this regard, it is submitted that as per record, there was not given any clear cut date to assessee to produce books of accounts. However, as per record, the assessee has also not produced books of accounts during the assessment proceedings. Therefore, on the basis of submission/reply of the assessee as well as material available on record, the AO had made addition of Rs. 2,62,81,530/- u/s 69A on account of undisclosed cash deposited in assessee's bank accounts during the period of demonetization i.e. from 09.11.2016 to 30.12.2016. As per section 69A, it is mentioned that — "Where in any financial year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of such financial year".

In para 5.5 - the Id. CIT(Appeal) says that assessee has deposited approximately the same percentage of cash accruing from sales from its petrol pump business. During the completion of assessment proceedings, the AO had noticed that the assessee had made cash deposits of Rs. 1,87,67,530/- and Rs. 75,14,000/- in State Bank of India and Axis Bank respectively from 09.11.2016 to 31.12.2016 and there was no any entry of cash deposits was found in the assessee's bank accounts in prior as well as after the demonetization period during the course of assessment proceedings completed on 03.12.2019.

In this regard, it is submitted that as per assessment record, the Id. CIT (Appeal) deleted the addition made by the AO on the basis of detail / documents already presented before AO. Further, as per record of this office, no any remand report in respect of accepting / admitting the additional evidences from the assessee has been called for by the CIT(Appeals).

5. On the other hand, the Id. A/R submitted his counter submissions as under :

“ Against the findings of Id. CIT (A), the department has filed para-wise written synopsis. The assessee relies upon the written submission filed before Id. CIT (A) and the findings given by him. However, the assessee is filing its counter comments on the comment given by the department on the finding of Id. CIT (A) hereunder.

It is stated at para 2 that out of total deposit of Rs. 2,62,81,530/- during the demonetization period, an amount of Rs. 77,88,030/- is not demonetized currency but no reply and documentary evidence was submitted during assessment proceedings. The same was submitted only vide letter dated 11.12.2019, i.e. after the date of assessment order. In this connection it may be noted that the fact that Rs. 77,88,030/- deposited in the bank account is not of demonetized currency was stated in reply dated 23.08.2019 (**PB-17**). Further the AO has nowhere rebutted the certificate given by the bank confirming this fact (**PB-30**). Therefore, there was no need for Id. CIT (A) to call a remand report on this issue when the facts were already on record of the AO.

It is stated at para 3 that as per record there was no entry of cash deposit in the assessee's bank account in prior as well as after the demonetization period. It is submitted that the assessee in its reply dated 10.09.2019 (**PB-6**) furnished details of all the bank accounts maintained by him from 01.04.2014 to 31.03.2017 and furnished copy of all these bank accounts at e-portal (**PB-9**) and thereafter at point no 22 and 23 of reply dated 26.11.2019 (**PB-20-21**) has also furnished the information regarding the cash sales and cash deposited in the bank account prior and post demonetization period. This fact is further verifiable from the bank statement available before the AO. It may be noted that

in the bank account maintained with SBBJ, there is regular cash deposit of sale proceeds prior to demonetization period, during demonetization period and also after demonetization period. However, due to heavy rush at SBBJ bank during the demonetization period, assessee has made deposit in Axis Bank also in which no cash deposit was made prior and after demonetization period. Thus, observation that there was no entry of cash deposit in the assessee's bank account in prior as well as after the demonetization period is factually incorrect.

At Para 4 it is accepted that the assessee was not given any clear cut date to produce books of accounts but as per record assessee has also not produced books of accounts during assessment proceedings. It may be noted that there is no mechanism in E-assessment proceedings to produce books of accounts physically. This has been explained at Para 3 of the submission filed before Id. CIT(A). Therefore, for this reason no addition is called for particularly when all the information as desired by the AO has been submitted in which no specific defect was found by him.

At Para 5 it is stated that CIT(A) has accepted that assessee has deposited approximately the same percentage of cash accruing from sales from its petrol pump business but no entry of cash deposit was found in assessee's bank account in prior as well as after the demonetization period. This issue has already been explained in Para 6 above.

In conclusion it is stated that Id. CIT(A) deleted the addition made by the AO on the basis of details/documents already presented before the AO but as per the assessment record no remand report accepting/admitting the additional evidences has been called for by CIT(A). This is contradictory in itself in as much as when the Id. CIT(A) deleted the addition on the basis of details and documents filed before the AO there is no need to call remand report admitting the additional evidence more particularly when assessee has not filed any additional evidence before Id. CIT(A).

In the ground taken by the department it is stated that Id. CIT(A) erred in deleting the addition made by AO applying section 69A of the Act. It may be noted that section 69A applies when assessee is found to be the owner of any

money or valuable article which is not recorded in books and the assessee offers no explanation about the nature and source thereof. Thus, for invoking section 69A, the primary condition is that the same is not recorded in books. In the present case, the transaction in Axis bank account and SBBJ account is duly recorded in the books of accounts **(PB 28)**. Hence, the ground of department is otherwise not tenable and therefore, the same be dismissed by upholding the order of Ld. CIT(A)."

6. We have heard rival contentions and perused the material available on record and also gone through the orders of the revenue authorities. We note that assessee is authorized dealer of Hindusthan Petroleum Limited and running a petrol pump in the name of M/s. Verma Filling Station. The assessee has deposited Rs. 2,62,81,530/- in its bank account with Axis Bank and SBBJ during the demonetization period. In response to the queries raised, the assessee filed reply vide letter dated 10.09.2019 and 26.11.2019 wherein he furnished the month-wise details of purchase and sale for Financial Years 2014-15 to 2016-17, month-wise list of closing stock from 01.04.2016 to 31.03.2017 and the cash deposited in bank account from FY 2014-15 to 2016-17. The AO, however, without discussing the reply filed by the assessee stated that assessee has not produced books of accounts and on persual of bank account it is found that cash was deposited in bank account only during demonetization period but no cash was deposited before and after demonetization. Accordingly, he made addition of Rs. 2,62,81,530/- u/s 69A of the Act. The Id. CIT (A) deleted the addition as per the finding given at para 5 to 5.5 of his order as under:

5. *Ground No. 1: In ground No. 1, the appellant has challenged the addition of Rs.2,62,81,530/- u/s 69A on account of unexplained cash deposit in the bank account. The AO has made the addition of Rs. 2,62,81,530/- by treating the cash deposit during demonetization period as unexplained. The appellant has stated that she is running a Petrol Pump who are permitted to accept the demonetized currency by RBI and deposit of only Rs. 1,84,93,500/- is made out of cash in hand/cash sales during demonetization period.*

5.1. *The appellant has submitted that out of the total deposit of Rs.2,62,81,530/- during the demonetization period, an amount of Rs.76,50,030/- (correct amount Rs.77,88,030/-) deposited in the bank account is not of demonetized currency as mentioned in reply dt. 23.08.2019. Firstly, this amount of Rs.77,88,030/- out of the total deposit of Rs.2,62,81,530/- is allowed and addition to this extent is deleted.*

5.2. *As far as the balance amount is concerned, it is seen that the appellant is running a petrol pump. The appellant is an authorised dealer of Hindustan Petroleum Ltd. and is running a petrol pump in the name of M/s Verma Filling Station at Mahal Road, Jagatpura, Jaipur. He filed his return of income on 30.10.2017 at total income of Rs.10,36,430/-. The appellant has submitted that most of the sales are in cash and the cash collected on a day is invariably deposited in the bank account on next date and the sales are duly recorded in the books of accounts which are duly audited and the source of cash deposit in the bank account during demonetization period is out of such sales. The appellant has argued that substantial cash deposit has been made in the bank account both in the period prior to demonetization and after the period of demonetization for which the bank statements were submitted before the AO. The appellant has further contended that the AO has accepted the sales and as the sales have been offered for tax and therefore, taxing the amount deposited in the bank account out of such sales in the assessment order, has resulted in double taxation.*

5.3. *The AO in making the addition has observed that appellant was asked to produce books of account but the same was not produced. The AO vide notice dt. 23.08.2019 in Query No.(v) required the appellant to produce the cash book and in response to that appellant in his reply attached the copy of cash book at e-filing portal. Thereafter, again the AO vide notice dt. 16.11.2019 at Point No.(v) repeated the same query and the appellant in response to the same stated that cash book along with vouchers and books of accounts would be produced as and when desired. In-spite of this, the appellant has stated that he was not given any*

particular date to produce the same physically before the AO. The appellant has further submitted that the AO in course of assessment proceedings has required from HDFC Bank, SBI Bank and Axis Bank to furnish the cash deposited in the bank account which was furnished by them. Thus, all these bank accounts were available with the AO for verification.

5.4. In this case, it is seen that the books of accounts are not rejected. The appellant has argued that no addition can be made without rejecting the books of accounts and has placed reliance on the decision of Hon'ble Allahabad High Court in case of CIT Vs. M/s Pashupati Nath Agro Food Products Pvt. Ltd. ITA No.165 of 2010 dt. 04.05,2017 where it is held that if the AO has not rejected the books of account, it means that the appellant has maintained the books of accounts in accordance with the prescribed standards as per s. 145 of the Act. If so, the AO is not entitled to make any addition on account of sale of goods out of books or for investment in stock out of undisclosed sources.

5.5. The following information was submitted by the appellant with reference to the sales and cash deposited during the demonetization period and in earlier years:

<i>Period</i>	<i>Total sales</i>	<i>Cash sales out of total sales</i>	<i>Cash deposited in bank account</i>	<i>Ratio of cash deposited in bank vis- a-vis sales</i>
01.04.2014 to 08.11.2014	8,13,97,526/-	7,72,55,215/-	7,64,70,585/-	99%
09.11.2014 to 31.12.2014	1,88,02,209/-	1,74,08,433/-	1,72,50,250/-	99%
01.04.2015 to 08.11.2015	8,33,94,177/-	7,64,47,539/-	7,46,81,510/-	98%
09.11.2015 to 31.12.2015	1,86,66,038/-	1,64,68,859/-	1,67,14,100/-	101%
01.04.2016 to 08.11.2016	12,28,44,308/-	10,96,11,524/-	10,84,62,100/-	99%

09.11.2016 to 31.12.2016	3,80,79,959/-	2,73,44,922/-	2,62,85,030/-	96%
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It is seen that cash has been deposited in the bank account from the cash sales made during that period in previous years as well. I have perused the assessment order. The AO has passed a three page assessment order wherein in 6 lines, the AO has mentioned that the appellant has failed to explain the cash deposits and has added the said amount. The explanation given by the appellant is considered and it is seen that the appellant has deposited approximately the same percentage of cash accruing from sales from its petrol pump business in its bank accounts and it is concluded that there is no infirmity in the cash deposits made by the appellant to the extent of the balance amount (Rs.2,62,81,530 - Rs. 77,88,030). The addition is deleted. Appeal on Ground No. 1 is allowed.

The Id. D/R though accepted that cash was deposited in the bank account not only during demonetization period but also in the period prior and subsequent to the period of demonetization and also in earlier years but he prayed the matter be set aside to the AO since assessee has not produced books of accounts for verification. We are not inclined to accept this contention of the Ld. DR since the CBDT in Instruction No. 3/2018 dated 20.08.2018 with reference to conduct of assessment proceedings through "E-proceeding" facility at para 5 has stated that personal hearing/attendance may take place where books of accounts has to be examined but in none of the notices issued by the AO, he required the assessee for personal attendance even when the assessee in its letter dated 26.11.2019 specifically pointed out that cash book and books of accounts will be produced as and when desired by the AO. Further, when cash book has been filed by the assessee and the cash sales has been deposited in the bank account on daily basis which matches

with the amount deposited in period prior to demonetization and after demonetization. We find no error in the finding of the Id. CIT (A) deleting the addition. Thus the ground of the department is dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 30/11/2022.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/11/2022.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ashu Varma, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 4(5), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 252/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

