

IN THE INCOME TAX APPELLATE TRIBUNAL  
“H” BENCH, MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 2172/Mum/2021

(A.Y: 2017-18)

Kamdhenu Departmental Stores Pvt Ltd., Plot No.5, Patliputra Chs Ltd., Four bungalow, Andheri (West), Mumbai – 400053.	Vs.	ACIT, CC – 7(3) Aayakar Bhavan, Mumbai.-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCR2811F		
Appellant	..	Respondent

Appellant by :	Mr.Rushabh Mehta.AR
Respondent by :	Mr.TejinderPalSinghAnand.DR

Date of Hearing	08.09.2022
Date of Pronouncement	17.10.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-42, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal.

1. (a) *The Id. CIT(Appeals) erred in facts and law in sustaining the addition of Rs.26,37,456/- u/s.68 of the Act on account of alleged excess sales credited in the books of account by simply comparing the quantum of cash sales recorded of Rs.1.76 crores in October 2016 with other*

*months of F.Y.2016-17 & preceding FY 2015-16 thereby treating the sales recorded in October 2016 as unusually high without taking other factors into consideration.*

*(b) The Id. CIT(Appeals) erred in facts and law in confirming the action of the Id. Assessing Officer in estimating the cash sales of October 2016 at Rs.1,50,00,000/- without appreciating that the same has been done by accepting the audited books of account and trading results on one hand and simultaneously rejecting the cash sales to the extent of Rs.26,37,456/-on the other hand; which is arbitrary and on his own surmises and conjectures.*

*(c) The Id. CIT(Appeals) erred in facts and law in not appreciating that there is no revision of sales/ purchases and any discrepancy found in the VAT returns and accordingly, mere non-maintenance of stock register cannot be the criteria to disprove the cash sales recorded in October 2016. (d) The Id. CIT(Appeals) erred in facts and law in not appreciating that the provisions of section 68 of the Act are not applicable to sales already offered to tax and the impugned addition does not represent 'cash credit' as mandated by section 68 of the Act.*

*(e) The Id. CIT(Appeals) erred in facts and law in not appreciating that the cash sales have already been offered to tax and addition thereof again will lead to double taxation which is against the principles of law.*

*2. Your appellant craves leave to add, amend, alter or drop all or any of the above grounds of appeal.*

2. The brief facts of the case are that the assessee company is engaged in the business of departmental

stores and filed the return of income electronically on 02.11.2017 for the A.Y 2017-18 disclosing a total income of Rs.1,14,13,450/- under normal provisions of the Act and Book profit u/s 115JB of the Act of Rs. 1,21,84,155/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under the CASS and the Assessing Officer(AO) has issued notice u/s 143(2) &142(1) of the Act along with the questionnaire. In compliance to the notice, the assessee has uploaded the information in the ITBA on line. The A.O found that the case of the assessee was selected for scrutiny in respect of large volume of cash deposits during the demonetization period and on perusal of the information the assessee has made cash deposits aggregating to Rs.1,75,52,660/- in the form of specified bank notes(SBN) in the three bank accounts referred at Para 5.1 of the assessment order.

3. The AO has called for the information to establish the source of cash deposits in SBN form during the demonetization period. Whereas the assessee has filed a letter dated 02.12.2019 with the details of month wise sales and cash deposits from 01.04.2015 to

08.11.2015 and from 01.04.2016 to 08.11.2016 and also the assessee has submitted the details of cash deposits in the comparative format for F.Y 2015-16 & 2016-17. The AO found that the disclosure made by the assessee is not in a proper format and asked to furnish the complete details in respect of SBN deposits during the demonetization period. The assessee company has submitted that it is running a departmental store with sales of large range of consumer products to the customers and since there are voluminous products, it was not possible to maintain the stock register . Whereas the assessee has submitted that the opening cash balances as on 08.11.2016 is Rs. 1,85,62,303/- and the cash balance was out of cash sales made in the month of October 2016 of Rs. 1,76,37,456/- and cash balance available till 07.11.2016 of Rs. 43,59,028/- and the business of products/goods does not have a fixed pattern of sales month wise.

4. Further the sales has increased from June 2016 and specifically during the October 2016 on account of Diwali festival and various/offers schemes to the customers. The AO was not satisfied with the facts

and called for the information in respect of the percentage of cash deposits. The assessee has submitted that the proportion of cash deposits to cash sales till 31.12.2016 i.e@ 87% and is in line with the last year and the ratio @ 86%. The assessee has also submitted the copy of the cash book, ledger and bank book ledger, monthly cash sales and non-cash sales for the last three years, copy of VAT return and there is no revision of sales in the VAT return post demonetization period. Whereas the A.O. has considered the facts & figures in respect of the details of departmental stores and copy of cash book ledger and bank book ledger referred at 5.4 of the assessment order and made analysis of month wise cash sales and non cash sales of preceeding three financial years. Finally the AO was not satisfied with the submissions and observed that the sales for October 2016 till 8 November are hiked and the A.O. having accepted the festival season of diwali in the month of October 2016 has estimated the cash sales at Rs.1,50,00,000/- as against Rs.1,76,37,456/- disclosed by the assessee and made an addition of differential amount of Rs.26,37,456/- as unexplained and applied the provisions u/sec68 of the

Act and assessed the total income of Rs.1,40,50,910/- and passed the order u/s 143(3) of the Act dated 29.12.2019.

5. Aggrieved by the order, the assessee has filed the appeal with the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the scrutiny assessee but confirmed the action of the Assessing officer and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed the appeal with the Honble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in disbelieving the cash deposits out of sales by the departmental stores during the festival season and the Assessing officer has estimated the sales for the same period without any prudent method applied for similar business operations. The Ld. AR also submitted that the sales made during the year for the period from June 2016 to October 2016 on account of festivals is not disputed. Further the assessee is regularly depositing the cash in the bank accounts and consistently following the system. The

Ld. AR emphasized on the various aspects is support of cash deposits which is in line with earlier years and subsequent years. Further there is no change in sales details as disclosed in the VAT returns. The Ld. AR substantiated the submissions with factual paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld. DR relied on the CIT(A) order.

7. We heard the rival submissions and perused the material on record. The sole disputed issue as envisaged by the Ld. AR that the CIT(A) has erred in confirming the action of the AO in making addition of differential estimation of cash deposits. The contentions of the Ld. AR that the assessee has been doing the regular business operations and has been following accounting system from earlier years which has been accepted by the revenue, only during the demonetization period the revenue has focused on the cash deposits which were recorded in the Audited financial statements and offered to tax as revenue receipt by the assessee. The Ld. AR demonstrated the details of cash book balance as on 08.11.2016 and also cash sales generated in the month of October 2016 till

the 07.11.2016. Further the assessee is maintaining the departmental store and dealing in hundreds of products and cannot have any fixed pattern of sales. During the year under consideration for the F.Y 2016-17, the sales transactions were increased due to Diwali festival and various schemes/discounts offered to the costumers.

8. The assessee company is also regularly depositing the cash in bank on monthly basis and certain amount of cash in hand held towards the business exigencies. Further the proportion of total cash deposits to the cash sales were demonstrated till 31.12.2016 is @87% and whereas in comparison for earlier year it is @ 86% and is minimal marginal difference. Whereas the A.O. without any basis or finding the discrepancies in audited books of accounts or comparable case has sou- motto estimated the cash sales for the month of October 2016 of Rs.1,50,00,000/-as against the cash sales disclosed by the assessee in the books of accounts for the same period of Rs.1,76,37,456/- without any enquiry or evidence . Whereas the A.O. has wrongly estimated the income/cash sales overlooking the factual aspects,

nature of business activities being the departmental stores and is involved in active business from several years and the source of cash deposits during the demonetization period are only out of the cash sales.

9. The assessee has substantiated the facts with the copy of the cash book, bank book, monthly sales details of last three assessment years, copy of VAT return to substantiate that the no sales tax returns were revised during the demonetization, details of cash deposits between 09.11.2016 to 31.12.2016 before the lower authorities in the assessee proceedings and the assessee could not maintain the stock register due to voluminous consumer products dealt in the departmental stores. Since the assessee has already offered the cash sales of Rs.26,37,456/- which is included in total cash sales as per audited profit & loss account and again addition by the AO of Rs. 26,37,456/- tent amounts to double addition. We found the submissions of the Ld. AR are duly supported by the material evidences in the paper book relied and has demonstrated the Tax Audit Report u/sec44AB of the Act placed at page 137 of the paper book and in particular at page 148 clause 35a of the

Form no 3CD, the Auditor has not qualified/ commented on quantitative details of goods traded by the assessee. Since the assessee company dealing with huge number of consumer items/ products, the inventory of stocks are physically verified by the management during the year and the annexure A to Independent Audit Report discloses these facts at page 134 of the paper book.

10. The Ld.AR demonstrated month wise cash and non cash sales at page 39 to 41 of paper book and duly supported by the VAT Audit report placed at page 42 to 115 of the factual paper book. Further on perusal of the Audited financial statements in particular the Balance Sheet As At 31 March 2017 placed at page 116, we find under the Head (2) Current Assets, the assessee has Low Trade receivables as on 31-03-2016 & 31-03-2017 in comparison to the total sales/ revenue from operations in the Audited Profit & Loss Account as per note 12 placed at page 122 of the paper book. Further the assessee has been following this system from earlier years and maximum sales is on cash basis and therefore the sundry debtors/ trade receivable are less than 2% of the sales disclosed in

the financial statements. Therefore the estimation made by the Assessing officer in respect of cash sales included in the Audited financial statements cannot be subjected to taxed twice. Further the A.O. has not made any enquiry or brought on record comparable case nor any scientific basis/formula in estimating adhoc cash sales for the disputed period.

i. We support our view relying on the Coordinate bench of Honble Tribunal Bangalore Bench decision in Anantpur Kalpana Vs ITO(A.Y.2017-18) dated 13-12-2021 (2022)138 taxmann.com 141(Bangalore Trib) has held as under:

*“Where assessing Officer made addition under section 68 on account of cash deposited by assessee in its two bank account post demonetization, since said cash deposit was towards assessee s sale proceeds which was already offered to tax by assessee and admitted by the revenue as revenue receipt, impugned addition made under section 68,resulting in double taxation, were liable to be deleted”*

ii. Similarly Honble Tribunal Hyderabad Bench in the case of Sri Lateef Abdul Mohd.Vs ITO 7(1) Hyderabad in ITA no 501/Hyd/2021 (A.Y.2017-18) dt 10-06-2022 has observed at page 9 Para 20 to 22 and allowed the appeal and read as under:

*“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 BankA/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 Nov2015 and thereafter is also commensurate with the regular trend.It is not a case where the assessee in 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 Honble 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 Honble 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 the 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 Honble 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 grounds raised on this issue are allowed”*

11. We considering the facts, circumstances and ratio of judicial decisions find that the action of the Assessing officer in estimating the cash sales as discussed in the above paragraphs are without any basis or methodology and cannot be sustained. Accordingly, we set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open Court on 17.10.2022.

Sd/-  
(AMARJIT SINGH)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 17.10.2022  
KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

आदेशानुसार / BY ORDER,