

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU (SMC) "C" BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member**

<b>ITA No. 976/Bang/2022</b> (Assessment Year: 2017-18)		
Shri Arif Nehru Nagar, Sagar Shimoga 577401 PAN – ADAPA8762G (Appellant)	vs	ACIT, Circle - 1 I.T. Office, No.75, 100ft Road Gopal Gowda Extension Shimoga 577201 (Respondent)

Assessee by:	Shri Nitesh Ranjan, CA
Revenue by:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing:	16.01.2023
Date of pronouncement:	16.01.2023

**ORDER**

**Per: Chandra Poojari, A.M.**

This is an appeal filed by the assessee against the order of the learned CIT(A),/NCAC, Delhi dated 10.08.2022 for AY 2017-18.

2. The assessee raised the following grounds of appeal: -

- “i The order of the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre("NFAC") dated 10-Aug-2022, passed under section 250 of the Income-tax Act, 1961 ("the Act") insofar it is against the Appellant, is opposed to the law, weight of evidence, facts, and circumstances of the Appellant's case.*
- ii The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.*
- iii The order is passed against the principle of natural justice and thus liable to be quashed.*
- iv The learned CIT (Appeal) erred by confirming the addition of Rs.11,66,999/-, even though the appellant furnished evidence in support of his claim.*

- v *The learned CIT (Appeals) has erred in upholding the order of the learned Assessing Officer invoking the provisions of section 68 of the Act, despite the fact that the appellant duly explained that the impugned cash deposits were proceeds from sales made during the period.*
- vi *The learned CIT (Appeals) has erred in confirming the additions of cash deposits made during the demonetization period without rejecting the sales amount and closing stock during the period, thereby bringing the same amount to tax twice – Rs.11,50,000/-.*
- vii *The learned CIT (Appeals) has erred in confirming the cash deposits as cash credits under section 68 of the Act, when such cash was from sales duly supported by bills.*
- viii *The learned CIT (Appeals) has erred in confirming the additions by comparing the cash balance as of 31-Mar-2016 with the cash balance on 09-Nov-2016 and not relying on the sales register and cash book, and by stating that they were self-generated.*
- ix. *The learned Assessing Officer and learned CIT (Appeals) failed to appreciate that the quantum of sales claimed by the Appellant was also supported by the quantum of purchases made by the Appellant from IOC limited.*
- x *The order of the learned Assessing Officer and learned CIT (Appeals) is purely based on surmises and conjectures without any logical reasoning.”*

3. The Assessing Officer (AO) made an addition of Rs.15,66,990/- under Section 68 of the Income Tax Act, 1961 (the Act) towards cash deposits into the bank accounts that included inflating of cash sales from 01.10.2016 to 09.11.2016 at Rs.11,66,994/-. The learned CIT(A) deleted an amount of Rs.4,00,000/- out of the above and sustain Rs.11,66,994/- which represents the inflated cash sales during 01.10.2016 to 09.11.2016. Against this the assessee is in appeal before the Tribunal.

4. The learned A.R. submitted that the deposit of amount into the bank account cannot be considered as unexplained credit under Section 68 of the Income Tax Act, 1961 (the Act). Further he submitted that the AO for making the addition considered the sales only for 10 days before the demonetisation

period with the average sales of prior three months. According to the learned A.R. the learned AO ought to have considered the average sales of the entire year instead of the average sales of three month to compare the sales in 10 days during the demonetisation period. He submitted that the assessee's books of accounts has been audited and the assessee also filed the VAT return which has been accepted by the Sales Tax authorities and the AO has not doubted the purchase account or stock account and he isolately considered the sale of 10 days during the demonetisation period and observed that the assessee has inflated sales during this period. The learned A.R. relied on the following judgements and submitted that without doubting the purchase or stock figures the AO cannot reject the sales declared by the assessee: -

- i. Smt. Charu Aggarwal vs. DCIT (2022) 140 taxmann.com 588 (Chandigarh)
- ii. Bansal Rice Mills vs. ITO (2022) 120 Taxman 155 (Chandigarh)
- iii. PCIT vs. Agson Global (P.) Ltd. (2022) 134 taxmann.com 256 (Delhi)
- iv. Lakshmi Rice Mills vs. CIT (1974) 97 ITR 258 (Pat.)
- v. CIT vs. Akshit Kumar (2021) 124 taxmann.com 123/277 Taxman 423 (Delhi)

5. The learned D.R. relied on the orders of the lower authorities.

6. I have heard the rival contentions and perused the material on record. In this case the main contention of the learned A.R. is that the Assessing Officer (AO) is precluded from making addition under Section 68 of the Act with respect of the unexplained bank deposits. Unexplained bank deposits cannot be considered under Section 68 of the Act and it falls under Section 69A of the Act. However, mentioning a wrong section by the AO is not fatal. We have to see the substance and not the form. Accordingly, I reject this ground of appeal of the assessee.

7. Now coming to the sustaining of addition towards inflated sales, in my opinion, it amounts to double addition as the said amount is considered in the

Profit & Loss Account and included in the already declared income of the assessee. In my opinion, there is a merit in this plea of the assessee. This inflated sales, if any, already had gone into the computation of income and making further u/s. 69A of the Act amounts to double addition which shall be avoided. In view of this, I direct the AO to exclude this amount from the income of the assessee. Thereafter, he has to make separate addition of the same amount under Section 69A of the Act provided if the assessee is not able to reconcile its sales with reference to the deposit of money into assessee's bank of account. While doing so, the AO has to consider the average daily sales of one year before the demonetisation period and if the assessee's sales during the demonetisation period found to be more than the average sales of prior one year, then only that difference amount can be considered for computation of inflated sales. The assessee shall furnish full details of one year's sales prior to the demonetisation period and the AO has to consider the average daily sales and compare it with the sales of demonetisation period. On the basis of this average sales, the sales during demonetisation period to be compared and fund flow/cash statement of the relevant period to be produced so as to demonstrate that the assessee is having sufficient cash balance to deposit into bank account. If there is shortage in cash balance, then only addition to be made to that extent. With this observation, I remand this issue to the file of the AO for fresh consideration.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Dictated and pronounced in the open Court on 16<sup>th</sup> January, 2023.

Sd/-  
**(Chandra Poojari)**  
**Accountant Member**

Bengaluru, Dated: 16<sup>th</sup> January, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NCAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar  
ITAT, Bengaluru*

n.p.