

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA Nos. 73/Jodh/2022
(ASSESSMENT YEARS- 2017-18)

Mewar Min Chem Pvt. Ltd. 1, Manohar-Kunj, Near Sitaram Ki Bawri, Bhilwara-311001.	Vs	Income Tax officer Ward-5, Bhilwara.
(Appellant)		(Respondent)
PAN NO. AACBM 9876 A		

Assessee By	Shri Rajendra Jain (Adv.)
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	17/01/2023
Date of Pronouncement	20/01/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

This is an appeal filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as “NFAC”), Ld. CIT(A) for the assessment years 2017-18 dated 25.03.2022, which in turn arises from the order passed by the Income Tax Officer, Wad-5, Bhilwara passed under Section 144 of the Income Tax Act, 1961 (in short 'the Act') dated 17.12.2019.

2. The assessee has raised the following ground:-

“1. That on the facts and in the circumstances of the case the ld. CIT(A) erred in upholding finding recorded by ld. AO without considering the submission and documentary evidences in right prospective and judicious manner.

2. That on the facts and in the circumstances of the case the ld. CIT(A) erred in sustaining addition of Rs. 11,74,800/- in respect of cash deposited in bank account u/s 69A of the Act.

3. That on the facts and in the circumstances of the case the ld. CIT(A) out to have accepted the cash deposited in bank account as genuine as same are supported from valid & credible evidences.

4. That on the facts and in the circumstances of the case the ld. CIT(A) erred in recording various observation/allegation in the order for rejection of appeal are apparently incorrect and contrary to law & facts.

5. That on the facts and in the circumstances of the case the ld. CIT(A), grossly erred in without analyzing the provision of law in right prospective and sustained the addition made by ld. AO.

6. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.

7. The petitioner prays for justice & relief.”

3. Briefly the facts of the case are that the assessee, a company, during demonetization period from 08.11.2016 to 31.12.2016 deposited cash of Rs.8,95,000/-in its bank account no. 3575002100040 maintained with Punjab National Bank and Rs. 2,79,800/- in its bank account no. UQBLW000270229716 maintained in ICICI bank. The company failed to file any return of income for A.Y 2017-18. Earlier the file was with ITO, Nagour and subsequently it was transferred to ITO, Bhilwara. In addition to

notices u/s 142(1) issued by ITO, Nagour, notices u/s 142(1) dated 05.11.2019 was issued by ITO, Bhilwara. In response of which the assessee submitted a reply along with cash book for the period from 01.04.2016 to 06.12.2016 and bank account statements. Subsequent to this, the assessee was issued final show cause notice on 12.12.2019. Therefore, in absence of any evidences for verifying the source of cash deposits during demonetization period and also not able to get any response from the assessee, the AO considered the amount of Rs. 11,74,800/- (Rs. 8,95,000/- Rs. 2,79,800/-) as unexplained money and added to the income of the assessee u/s 69A of the IT Act, 1961 after discussion or prior approval of the JCIT, Bhilwara u/s 144A of the I.T. Act.

4. In the aforesaid order, the AO issued notice to the assessee u/s 142(1) of the I.T. Act, 1961 and re-adjudicated the matter. The relevant part of the assessment order is reproduced as under:-

"1. The assessee company has made cash deposits amounting to Rs 11,74,800/- during the demonetization period in the bank .The assessee company has not filed ITR, not declared its true income and has not paid taxes due thereon. Further, show cause notices issued during E-assessment proceedings also remained uncomplied with by the assessee company. The assessee company failed to give any explanation about the nature and source of cash deposits, hence the value of Cash deposits, appearing in the bank statements as in the body of the Order is deemed as unexplained money u/s 69A of the Income Tax Act, 1961 and added to the Total Income of the assessee and charge taxed as per provision of section 115 BBE of the Act. Now Rs.11,74,800/- has been added to your total income U/s 69A

as treating it as your unexplained money after the discussion or prior approval of the JCIT, Bhilwara u/s 144A of the I.T. Act, 1961.

Further, penalty proceedings u/s 271 AAC of the Act in respect of unexplained income is initiated. The assessee has not filed its Return of Income for AY 2017-18, therefore, penalty u/s 271E of the Act is also initiated for failure to furnish return of income.

Assessed u/s.144 of the Income tax Act, 1961 at total Income of Rs.11,74,800/-. Calculation of tax and interest has been made and charged as per ITNS-150 appended to this order and which is a part of this assessment order. Issued Demand Notice u/s.156 of the Act, Issued penalty notice u/s.271AAC of the I.T. Act, 1961 separately”

5. Being aggrieved by the AO the assessee preferred an appeal before the Id. CIT(A) and the findings are reproduced as under:-

“6.1 I have considered the facts mentioned in the grounds of appeal, statements of facts, submission of the assessee and the view of the AO in the assessment order passed u/s 144 of the Act in case of the assessee.

6.2 In response to notice u/s 142(1) dated 05.11.2019, the assessee submitted the cash book and bank statements as evidences. The assessee explained that its business was shut down in the middle of the year 2017. The assessee was recovering its old dues from debtors in a hasty manner. The assessee had to settle one time (OTS) with the financial institutions for their long awaited dues. The assessee has withdrawn all monies from PNB in fear of financial institutions threat for presenting due cheques and taking legal action.

6.3 In the assessment proceedings, the AO asked for other supporting details like trading account, P&L account, Balance Sheet, list of unsecured loans, fixed assets details. cash book for FY 2015-16 & 2016-17 and sales bill for the year under consideration. The assessee did not submit any of the above asked documents. Therefore, the AO in absence of any supporting evidence considered the cash deposit as unexplained money and added Rs. 11,74,800/- u/s 69A of the IT Act, 1961.

6.4 Upon perusal of the reply of the assessee, it is seen that during the appellate proceedings also, the assessee has submitted only copy of cash book and bank account statements for PNB and ICICI bank accounts. The cash book submitted by the assessee starts with zero balance on 01.04.2016 which is unlikely in case of a running concern. Also, no expenses are seen credited in the cash book other than some deposit entry in the PNB bank. For a concern which was not shut down in the year under consideration and was running till the end of the year, it is unbelievable that no cash expenses will be incurred. This shows that the cash book submitted is just prepared to explain the source of cash deposits. Besides, the assessee failed to submit financial accounts which could help to establish the authenticity of the cash book. As far as the logic of the assessee regarding withdrawal of money is concerned, it has not filed any evidence to demonstrate the threat from financial institutions.

6.5 I do not find any formal order having been passed u/s 144A by the JCIT and hence the requirement to allow opportunity of being heard does not arise.

6.6 So far instruction no. 3 of 2017 dated 27 Feb 2017 is concerned, it was related to preliminary online verification of information and should not be construed as conducting scrutiny or in-depth authentication [Refer para 5]. There was no such requirement to take approval from higher authority while passing assessment order u/s 143(3)/144.

6.7 Considering the entirety of facts and in absence of any proof regarding genuineness of the cash and sources of the cash deposits during the demonetization period, I do not find any reason to disagree with the addition made by the AO and therefore, the addition of Rs.11,74,800/- made by the AO is upheld. As a result, all grounds of appeal are dismissed.”

6. Now the assessee is in appeal.
7. The ld. DR supported the order of the lower authorities.
8. We have heard both the parties, perused materials available on record.

The Bench in the case of the assessee observed that the assessee was not provided sufficient opportunity to produce the documentary evidences as to genuineness of cash book and source of cash deposit during the period of

demonetization. Hence, it will be in the interest of equity and justice to restore the matter to the file of the AO to examine the case afresh but by providing adequate opportunity of being heard to the assessee. The assessee is also directed to produce the documentary evidences concerning the issue in question and will cooperate the AO. Thus the appeal of the assessee is allowed for statistical purposes

In the result, the appeal of the assessee is allowed for statistical purpose .

Order pronounced in the open Court on 20/01/2023.

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 20/01/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench