

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, KOLKATA
BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

ITA No. 564/Kol/2022
Assessment Years: 2017-18

Ruhr Ispat Pvt. Ltd. Bamunara Industrial Area Mouza - Gopalpur PS: Kanksa, Burdwan West Bengal - 713216 [PAN: AADCR 3657 E]	Vs.	Assistant Commissioner of Income Tax, Circle-3(1), Kolkata
(Appellant)		(Respondent)

Assessee by :	Shri Sushil Kumar Pransukha, FCA
Revenue by :	Shri P.P. Barman, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 28/12/2022
घोषणा की तारीख/Date of Pronouncement : 01/02/2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order passed by the National Faceless Appeal Centre, Delhi, (hereinafter the “Id. CIT(A)”) dated 21/09/2022 for Assessment Year 2017-18 against the assessment order passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) passed by ACIT, Circle-3(1), Kolkata, dated 30/12/2019.

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

“1. That on the facts and circumstances of the case, the CIT(A)-NFAC had erred both in law and on facts by confirming the order of the Assessing Officer on making an addition of Rs.75,00,000/- being cash deposit during demonitization period which was fully explained to A.O. as well as CIT(A).

2. *That the assessee craves leave to add, to amend or withdraw to all or any ground on or before the hearing of the appeal."*

3. The assessee had also raised an additional ground vide its application dated 29/11/2022 filed on 20/12/2022, challenging the jurisdiction of the assessment completed u/s 143(3) in view of no notice issued u/s 143(2) of the Act, after the transfer of case from ACIT, Circle-1, Durgapur to the present Assessing Officer.

3.1. On this additional ground, upon specific query by the Bench relating to filing of return and availability of its copy, Id. Counsel for the assessee could not lay his hands on the same and thereby owing to incomplete records, did not press for the additional ground so raised. Accordingly, the additional ground raised by the assessee is dismissed as not pressed.

4. Now, delving upon the original ground of appeal, brief facts of the case are that assessee filed its return of income on 09/09/2017 reporting a loss of Rs. 37,62,376/-. Assessee is in the business of manufacturing of mild steel angle, mild steel channel, mild steel flats, hot rolled strips etc. Case of the assessee was selected for scrutiny under CASS. Statutory notices were issued and served upon the assessee which were duly complied with as noted by Id. Assessing Officer in the impugned order. In the course of assessment, Id. Assessing Officer noted that assessee has deposited cash of Rs.75,00,000/- in the bank account during the demonetization period of specific bank note (SBN) currency. Id. Assessing Officer called for explanation in this respect. Details of the said cash deposit is tabulated as under:-

<i>Name of the Bank</i>	<i>Acc. No.</i>	<i>Amount Deposited</i>	<i>Remarks regarding the cash deposit</i>
<i>Oriental Bank of Commerce</i>	<i>5875015002403</i>	<i>75,00,000</i>	<i>The assessee had shown the realization of debtors and cash sale made during the year.</i>

5. Assessee also submitted that at the cash verification stage i.e., before the selection of case for scrutiny, assessee had submitted that an amount of Rs.47,61,890/- pertained to realization from debtors which was realized during the period from 01/04/2017 to the date prior to the date of announcement of demonetization and the balance Rs.27,38,110/- pertained to sales made in cash to unidentified persons. In the course of assessment proceedings, assessee had also furnished the details of cash book and realization of debtors. It was also submitted that the closing cash balance as per its cash book as on 08/11/2016 i.e., the date of announcement of demonetization, was Rs.77,37,460/- consisting of Rs.75,00,000/- of SBN and balance Rs.2,37,460/- as non-SBN. Assessee furnished the relevant part of its cash book to corroborate these facts. He, thus, submitted that this deposit of cash is out of the opening cash balance as on the date of demonetization and its source is fully explained from its regular books of accounts which have been subjected to audit and produced during the course of assessment. However, Id. Assessing Officer proceeded to complete the assessment, not being satisfied with the submissions made by the assessee and made the addition u/s 68 r.w.s. 115BBE of the Act.

5.1. Aggrieved, assessee went in appeal before the Id. CIT(A) who dismissed the appeal of the assessee.

6. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, Shri Sushil Kumar Pransukha, FCA, represented the assessee and Shri P.P. Barman, Addl. CIT, represented the department. Id. Counsel for the assessee, apart from reiteration of the facts narrated above, submitted that during the year under consideration, the turnover of the assessee is of Rs. 85.26 Crores which include both cash sales and credit sales. He further stated that assessee maintained regular books of accounts which are subjected to statutory

audit under the Companies Act, 2013, and also tax audit u/s 44AB of the Act. He pointed to the fact that auditors have certified the deposit of said cash during demonetization period by mentioning the same in Note No. 13 of the audited accounts which was required under MCA Notification No. G.S.R. 307(E), dated 30th March, 2017. He further submitted that, the entire amount of cash sale as well as realization from debtors has already suffered taxation as these are part of the turnover of the assessee, duly disclosed and reported in its audited profit and loss account. In respect of realization from debtors of Rs.47,61,890/-, he referred to the standard operating procedure (SOP) issued by the CBDT vide Instruction no. 03/2017, dated 21/02/2017 Annexure, of which para 4 was referred. The said para 4 is reproduced as under:-

"4. Cash received from identifiable person (with PAN)

4.1 No additional information is required to be submitted by the person under verification as the information will be pushed to the AO of the identifiable persons (with PAN)

4.2 In case identifiable persons (with PAN) does not confirm the transaction, the response will be referred back for further verification."

7.1. In view of the above, ld. Counsel for the assessee referred to the details of the sundry debtors from whom this amount of Rs.47,61,890/- was realized which is tabulated as under:-

Sl. No.	Name of Debtors	PAN	AMOUNT
1	Incorporated DA UB Verhoden Ltd.	AAACI7444M	1,186,045.00
2.	Jainex Steel In Duster	AADFJ4906F	1,933,986.00
3.	Zooks International	AAAFZ1430B	598,299.00
4.	Sarva Mangalam Gunjan Steel (P) Ltd.	AAICS5924J	279,113.00
5	New Kundu Hardware	BPRPK0186E	364,416.00
6.	Pachal Transformers Pvt. Ltd.	AADCP8057C	400,031.00
Total:			4,761,890.00

8. In respect of cash sales, it was reiterated that assessee had submitted date-wise details of cash sales including Excise duty and VAT charged on each sale which were tallied with the Excise return and VAT return. He referred to the “tax invoices/excise invoices-cum-challans”, forming part of the paper book, placed at page nos. 46 to 64. It was also asserted that since the sale was made in cash, party-wise details were not required to be maintained. He also submitted that, there was no revision to the Excise return and VAT return filed by the assessee. He also referred to the audited balance sheet as on 31/03/2017 placed at page 130 of the paper book to demonstrate that assessee had trade receivables of Rs.10,45,71,347/- as on 31/03/2016 and Rs.12,48,57,833/- as on 31/03/2017. Ld. Counsel for the assessee also emphasised on the fact that deposit of cash was also intimated electronically to the Department vide its transaction no. 4228483876, dated 25/07/2017.

8.1. Ld. Counsel for the assessee, thus, asserted that addition made by Id. Assessing Officer tantamounts to taxing the same income twice, since the deposit of cash is out of the realization from debtors which has already been reported in its turnover and the cash sales and, therefore, the addition so made, ought to be deleted.

9. We have heard the rival contentions and perused the material on record.

9.1. It is a fact that amount of deposit of cash is arising out of the opening balance of cash as on 08/12/2016 which in turn is out of realization from debtors of Rs.47,61,890/-. The same has been detailed in the order of Id. CIT(A) which is reproduced as under:-

“(a) Incorporated DA UB Verhoden Ltd.

<i>Date</i>	<i>Amount</i>	<i>Date</i>	<i>Amount</i>	<i>Date</i>	<i>Amount</i>
04.04.2016	80,000	22.04.2016	65,000	22.05.2016	75,000

08.04.2016	90,000	24.04.2016	35,000	24.05.2016	75,000
11.04.2016	50,000	25.04.2016	38,000	30.05.2016	25,545
12.04.2016	19,500	30.04.2016	80,000		
16.04.2016	80,000	05.05.2016	1,00,000		
19.04.2016	54,000	09.05.2016	78,000		

(b) Pachal Trasformers Pvt. Ltd.

Date	Amount	Date	Amount	Date	Amount	Date	Amount
01.06.2016	15,000	14.06.2016	20,000	28.06.2016	18,000	07.07.2016	17,000
03.06.2016	20,000	16.06.2016	12,000	29.6.2016	19,000	08.07.2016	20,000
05.06.2016	19,000	19.06.2016	20,000	02.07.2016	20,000	16.07.2016	18,000
08.06.2016	20,000	22.06.2016	18,000	04.07.2016	18,000	11.07.2016	20,000
11.06.2016	55,000	25.06.2016	20,000	05.07.2016	20,000	13.07.2016	12,000
						14.07.2016	19,000
						19.07.2016	14,031

(c) Jainex Steel In duster

Date	Amount	Date	Amount	Date	Amount
02.04.2016	92,000	22.05.2016	37,500	02.07.2016	75,000
04.04.2016	74,000	25.05.2016	90,000	03.07.2016	80,000
06.04.2016	89,000	30.05.2016	95,000	04.07.2016	55,000
08.04.2016	95,000	07.04.2016	75,000	05.07.2016	80,000
05.05.2016	90,000	09.06.2016	52,000	06.07.2016	55,000
10.05.2016	89,000	12.06.2016	55,000	08.07.2016	28,986
15.05.2016	90,000	20.06.2016	95,000		
18.05.2016	75,000	30.06.2016	80,000		
20.05.2016	72,500	11.07.2016	95,000		

9.2. Dates noted in the above tables are prior to the date of announcement of demonetization which forms part of the daily accounted cash in the cash book of the assessee. Further, the cash sales made by the assessee forms part of its Excise return and VAT return which were not subjected to revision.

9.3. We note that assessee has a turnover of Rs.85.28 Crores in the year under consideration and of Rs.86.92 Crores in the immediately preceding year. At such volume of turnover, the quantum of cash sales and realization in cash are normal in the conduct of its business. We also note that all the details in respect

of collection from the debtors were identified and submitted before the Id. Assessing Officer as well as before the Investigation wing of the Department, prior to the assessment proceedings.

10. Considering the factual matrix, corroborated with documentary evidence, we are inclined to accept the contentions of the Id. Counsel for the assessee and direct to delete the addition made by Id. Assessing Officer and confirmed by Id. CIT(A), by setting aside their orders. Accordingly, ground taken by the assessee in this respect is allowed.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 01.02.2023.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Kolkata, Dated: 01.02.2023
SC. Sr. P.S.

Copy to:

1. The Appellant:
2. Respondent :
3. The CIT(A)- Kolkata
4. The CIT , Kolkata.
5. The DR ITAT, Kolkata.

//True Copy//
By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata