

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ ‘ Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.246/Hyd/2022		
Assessment Year: 2017-18		
Rajalakshmi Agencies Hyderabad PAN: AAMFR4103R (Appellant)	Vs.	Income Tax Officer Ward 7(2) Hyderabad (Respondent)
Assessee by:	Shri Bhupesh Kumar Dand, CA	
Revenue by:	Shri K.P.R.R. Murthy, DR	
Date of hearing:	02/02/2023	
Date of pronouncement:	03/02/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 25.04.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y. 2017-18.

2. Although a number of grounds have been raised by the assessee, these all relate to the order of the learned CIT (A)-NFAC in confirming the addition of Rs.1,07,99,000/- made by the Assessing Officer being cash deposited during the demonetization period.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of wholesalers and

retailers in Bakery Products and other related products. It filed its return of income on 2.11.2017 declaring total income of Rs.7,29,990/-. The case was selected for scrutiny under CASS for the reasons "Large cash deposit during demonetization and abnormal increase in sales with decrease in profitability compared to preceding previous years". Accordingly statutory notices u/s 143(2) & 142(1) of the I.T. Act were issued from time to time to the assessee and in response to the same the assessee appeared before the Assessing Officer and furnished the requisite details as called for by the Assessing Officer.

4. During the course of the assessment proceedings, the Assessing Officer noted that the turnover of the assessee for the year is 26,22,34,894/-. The assessee submitted VAT returns for verification. On being questioned by the Assessing Officer regarding the deposit of Rs.1,07,99,000/- during the demonetization period, which is not a legal tender money, it was explained that the same is from out of business. However, in absence of production of sales bills for verification of the amount deposited during the specific period, the Assessing Officer held that the explanation given by the assessee is not verifiable. He, therefore, treated the deposit of Rs.1,07,99,000/- as unexplained money u/s 69A of the I.T. Act. While doing so, he relied on the decision of the Hon'ble Supreme Court in the case of Sreelekha Banerjee (1963) 49 ITR 112 (S.C).

5. In appeal, the learned CIT (A)-NFAC confirmed the addition made by the Assessing Officer by observing as under:

"8. I have carefully considered the action of the Assessing Officer and the submissions of the appellant. I have noted that the cash was deposited during the demonetization

period. I also noted that assessee failed to produce the sales bills in support of cash deposits. The assessee's claim that cash deposit is receipts from out of sales is a mere assertion not substantiated with due evidence. With the above observations, I find no need to interfere with the order of the Assessing Officer."

6. Aggrieved with such order of the learned CIT (A)-NFAC, the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee referring to Paras 2 & 3 of the Paper Book-I drew the attention of the Bench to the details of cash deposited during the demonetization period. Referring to page 5 of the Paper Book-II filed, he drew the attention of the Bench to the month-wise cash sales and cash deposit from 1.4.2015 to 8.11.2015 and from 1.4.2016 to 8.11.2016.

8. He submitted that the turnover of the assessee during the year as mentioned by the Assessing Officer himself is Rs.26,22,34,894/-. The assessee had sufficient cash balance available on the date when the demonetization of the specified currency note was announced. He submitted that the lower authorities simply sustained the addition on the ground that the assessee did not produce the sales bills for verification. He submitted that the sales shown by the assessee as per the audited account is not in dispute and the VAT return filed before the Assessing Officer was duly verified. Merely because the sales bills were not produced for verification, the same cannot be a ground for making the addition by the Assessing Officer and the learned CIT (A) is not justified in sustaining the addition.

9. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A). He submitted that the assessee has deposited cash in the Bank A/c during the demonetization period which is not a legal tender money. The assessee has not submitted the sales bills for verification of the Assessing Officer. Referring to the following table as per Page 5 of the Paper Book II filed by the assessee, he submitted that there are inconsistency in the closing cash on hand at the end of April, 2016.

Details of month wise cash sales and cash deposits from 01.04.2016 to 08.11.2016 in the following format					
Month wise	Opening cash in hand	Cash sales	Cash deposited In Bank	Cash Withdrawal from bank	Closing cash on Hand
April, 2016	219568	1329771	1170130	0	6884684
May, 2016	6884684	1936149	2952500	25000	10157190
June, 2016	10157190	1746459	4762000	15500	11121778
July, 2016	11121778	3792265	11560300	143500	8429329
August, 2016	8429329	11591735	16983500	93500	9751797
September, 2016	9751797	7023706	13180000	100000	10939149
October, 2016	10939149	8311212	19694430	84500	7953690
08-November,2016	7953690	8268971	3722000	50000	14411215

9.1 He accordingly submitted that under these circumstances, the learned CIT (A) is fully justified in sustaining the addition made by the Assessing Officer. The learned DR also relied on the following decisions:

- i) ITAT Hyderabad Benches in the case of Vaishnavi Bullion P Ltd in ITA Nos.560 & 561/Hyd/2020, 58 and 59/Hyd/2021 dated 28.11.2022

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We

find the AO in the instant case made addition of Rs.1,07,99,000/- to the total income of the assessee u/s 69A of the Act on the ground that the assessee during the demonetization period had deposited cash in the Bank A/c which is not a legal tender money and has not submitted the sales bills to substantiate that such cash so deposited was out of business. We find the learned CIT (A) sustained the addition made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that the money so deposited in the Bank A/c during the demonetization period is out of the business cash available as on 8.11.2016 and he is entitled to deposit the opening cash balances as on 8.11.2016 up to 31.12.2016. It is the submission of the learned DR that the month-wise cash sales and cash deposits shown by the assessee is faulty and due to clerical errors the assessee has shown huge cash balance at the end of every month. We find the Assessing Officer in the instant case has made the addition of Rs.1,07,99,000/- on the ground that the assessee did not furnish the sales bills for his verification. We find the learned CIT (A) in the instant case sustained the addition made by the Assessing Officer in a very cryptic order which has already been reproduced in the preceding para. Since it is the submission of the learned Counsel for the assessee that given an opportunity, he is in a position to substantiate the cash deposit of Rs.1,07,99,000/- in the five bank accounts during the demonetization period by proving that the same is out of business cash available as on 8.11.2016, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate the availability of cash balance as on 8.11.2016 and

decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 3rd February, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 3rd February, 2023

Vinodan/sps

Copy to:

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1	Rajalakshmi Agencies, 14-4-355 Shanta Complex, Begum Bazar, Hyderabad 500012
2	Income Tax Officer Ward 7(2) Hyderabad
3	CIT (A)-NFAC Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order