

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 88/Asr/2022
Assessment Year: 2017-18

Himalaya Spinning Mills
12 KM Milestone, G. T.
Road, Manawala, Amritsar
143001, Punjab

[PAN: AABFH 8548R]

(Appellant)

V. Income Tax Officer,
Ward 2(1), Amritsar

(Respondent)

Appellant by Sh. Vipul Arora, C.A.

Respondent by Sh. Rajiv Wadhwa, Sr. D.R.

Date of Hearing : 08.02.2023
Date of Pronouncement : 20.02.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 14.03.2022 in respect of Assessment Year 2017-18.

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

- “1. That the Worthy CIT (A) has erred in law and facts in confirming an addition of Rs. 27,00,000 /- u/s 68 of the Income Tax Act, 1961 and also confirming invoking OF provisions of Section 115BBE of Income Tax Act by the Learned AO.
 2. That the Worthy CIT (A) has confirmed the additions of Rs.27,00,000/= made by the AO on the basis of suspicion, whims, surmises and conjectures and has not appreciated that the AO has not discharged the onus that lay on him to justify the cash sales to be Unexplained Cash Credits.
 3. That the Worthy CIT (A) erred in rejecting the cash sales which was made out of Opening Stocks of Rs. 44,61,330/- and purchases made during the year.
 4. That the Worthy CIT (A) has failed to appreciate that the VAT was duly paid on cash sales and cash sales were included in the VAT returns of the period.
 5. That Worthy CIT (A) erred in confirming the addition of Rs. 27,00,000/= on the basis of comparison of cash sales of current year with the previous year cash sales and ignoring the fact that each year is an independent year .
 6. That the worthy CIT (A) has erred in confirming the addition made by the Assessing Officer U/s 68 of the Income Tax Act, 1961 at Rs. 27,00,000/- which is void ab initio as the AO rejected the sales made by the assessee without rejecting the Books of Account of the assessee.
 7. That the Worthy CIT (A) has erred in confirming the levy of tax as per the amended provisions of Section 115BBE when the same was amended on 15th December, 2016 for application prospectively.
 8. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”
3. The A.O was being not satisfied with the reply of the assessee, made an addition of Rs. 27,00,000/- u/s 68 by rejecting the Cash Sales being

claimed to be made out of Opening Stocks of Rs.44,61,330/- and purchases made during the year duly supported with the VAT paid on such cash sales as per the VAT returns of the period under consideration.

4. In the appellate proceedings, the Id. CIT(A) has confirmed the finding of the AO vide paras 6.1 to 6.4 by observing as under:

“6.1 Assessee explained the sources for the cash deposits in the bank account totaling to Rs.27,00,000/- during the demonetization period as cash sales. AO did not accept the explanation given by the assessee and added Rs.27,00,000/- u/s 68.

6.2 In the grounds of appeal, the appellant stated that - (i) A.O erred in making addition of Rs. 27,00,000/- u/s 68 (ii) A.O erred in rejecting the Cash Sales which was made out of Opening Stocks of Rs.44,61,330/- and purchases made during the year (iii) A.O failed to appreciate that the VAT was duly paid on cash sales and cash sales were included in the VAT returns of the period and (iv) A.O erred in making the cash sales comparison with the previous year cash sales.

6.3 In the written submission the A.R of the appellant stated that - (i) the assessee made cash sales of Rs.27,30,095/- during 1/4/2016 to 8/11/2016 and deposited the cash in its Bank Account during 9/11/2016 to 31/12/2016 (ii) Assessee filed Vat Returns (iii) Assessee was not maintaining any stock records since inception of the firm (iv) Assessee had no system of gate passes and did not keep any record of transportation of goods and (v) A.O had rejected the trading results of the assessee without invoking the provisions of Section 145 and without rejecting the Books of Account of the assessee which is not correct.

6.4 Assessee explained the sources for the cash deposits in the bank account totaling to Rs.27,00,000/- during the demonetization period as cash sales.

AO observed that - (i) cash deposited into bank by the assessee increased by 389.82% in the F.Y 2016-17 as compared to F.Y 2015-16 and (ii) cash deposited into bank by the assessee during demonetization period (from 09.11.2016 to

31.12.2016) increased by 389.82% in the F.Y 2016-17 as compared to the same period in F.Y 2015-16.

A.O further observed that the total cash sales during the F.Y 2015-16 was Rs.5,60,204/- and cash sales during the F.Y 2017-18 was also negligible.

Thus the assessee had not sold his goods in cash in earlier year (F.Y 2015-16) and in the next year (F.Y 2017-18).

Under these circumstances it is the responsibility of the assessee to prove the genuineness of the huge cash sales of Rs.27,30,095/- claimed during 1/4/2016 to 8/11/2016 which in turn was claimed as the source for the cash deposited in Bank Account during 9/11/2016 to 31/12/2016.

A.O asked the assessee to provide the names and addresses of the parties to whom the cash sale were made. However the assessee failed to provide the names and addresses of the parties to whom the cash sale were made.

During the appeal proceedings also, the assessee did not provide the names and addresses of the parties to whom the cash sale were made and did not bring any material on record to establish the genuineness of the cash sales. Hence the same cannot be accepted as the source for the cash deposited in the bank account totaling to Rs.27,00,000/- during the demonetization period.

For the above stated reasons, the addition of Rs.27,00,000/- u/s 68 r.w.s. 115BBE is upheld.”

5. The Id. Counsel for the appellant submitted that the Worthy CIT (A) erred in rejecting the cash sales, made out of Opening Stocks of Rs. 44,61,330/- and purchases made during the year without appreciating the fact that the VAT was duly paid on these cash sales which were included in the VAT returns of the period under consideration. The authority below was grossly unjustified in confirming the addition of Rs. 27,00,000/- on the

hypothetical comparison of cash sales of current year with the previous year cash sales without appreciating the fact that each year is an independent assessment year. The Ld. AR filed a brief written synopsis which reads as under:

“The appellant submits as under

1. *Sufficient stocks were available throughout the year and at the time when cash sales were made.*
2. *Stock records and stock tally was provided during the course of assessment proceedings.*
3. *VAT returns were provided during the assessment proceedings. VAT 20(Annual Return) was also provided during the assessment proceedings.*
4. *Figures of Sales, closing stock FY 2016-17 , opening stock FY 2017-18 were not disturbed by the AO while framing the order under the present appeal.*
5. *The cash sales of Rs.27,30,095/=made by the appellant during FY 2016-17 has been part of credit side of trading account and thus already added to income. The AO has added the same income twice by adding the same under Section 68 of the Income Tax Act,1961.*

The parawise observation of Worthy CIT(A) with submissions of the appellant are as under ;

<i>Para No of CIT(A)'s order</i>	<i>Observations of CIT (A)/AO's observation (reproduced)</i>	<i>Submissions</i>
<i>3.3</i>	<i>To verify the cash sale, the assessee was asked to produce complete books of accounts alongwith gate pass receipts/register, stock register. The Books of accounts were produced before the undersigned.</i>	<i>The appellant provided stock detail/tally during the course of assessment proceedings.</i>

	<p><i>The assessee submitted that no stock register is being maintained since the start of the business. Regarding gate pass receipts/register, he submitted that the firm has no practice of making gate passes due to low volume of sales and the firm has never deployed any gate keeper. The partners themselves keep monitoring over the receipt and dispatch of material.</i></p> <p><i>The assessee was asked to provide the name & address to whom the cash sale was made during the year under consideration. Thus, the assessee failed to provide the name of parties to whom the cash sale was made</i></p>	<p><i>The appellant was asked to provide name of the parties to whom cash sale was made. The assessee provided name of two parties along with their complete details. The details of rest of parties to whom cash sale was made was not maintained by the party and there is no provision in the Income Tax Act which mandates the recording of names of the party to whom cash sale was made.</i></p>
3.5	<p><i>The assessee firm also failed to submit any documentary evidence regarding mode of conveyance in which the goods sold were went outside the factory premise and nor any gate register in which entries were made for incoming/outgoing material. Thus, it clearly proves that no material was gone outside the factory building.</i></p> <p><i>Moreover the comparison data revealed that during the F.Y. 2015-16, the total cash sale was Rs. 5,60,204/- and out of this only cash sale for Rs. 1,30,000/- was made during the period 01.04.2015 to 31.12.2015 and remaining cash sale of Rs. 4,30,204/- was during the period 01.01.2016 to 31.03.2016. During the financial year 2017-18 also, the cash sale of the assessee firm was negligible. The assessee's has not</i></p>	<p><i>The cartage account was submitted before the AO during the course of assessment proceedings.</i></p> <p><i>The AO himself found that there was cash sale of Rs. 560204/- in FY 2015-16. Hence the AO wrongly held that no goods in cash was sold during the earlier FY 2015-16.</i></p>

	<p><i>sold his goods in cash in earlier year and nor in next year clearly proves that bills were only generated for only eye wash and no goods sold actually against these bills.</i></p> <p><i>When the assessee firm is engaged in the business of manufacturing & trading of Shoddy Yarn and cloth and there was no reason to sold the goods in cash and nor his history in past to sold his goods in cash, as he is manufacturer not a retailer.</i></p>	<p><i>There is no bar on selling goods in cash by the manufacturer.</i></p>
<p>3.10 &3.11</p>	<p><i>Further total shoddy yarn was available costing range Rs. 105/- to Rs. 145/- including 2580 kg. purchased from M/s Bajrang Woollen Mills was 10964 kg. whereas cash sales was made of same costing of shoddy yarn 11510 kg. between the range of Rs. 105/- to Rs. 148/-. It clearly shows that the assessee firm has sold 546 kg. of shoddy yarn in excess. This means that the sale was made out of stock to cover up the cash sales.</i></p> <p><i>Further, assessee firm had 5091 kg.(2511 + 2580) of shoddy yarn costing range of Rs.142/- to Rs. 145/- per kg. Out of this 5091 kg., 2580 kg. of shoddy yarn costing range between Rs. 142/- to Rs. 145/- was sold between the range of Rs. 145/- to Rs. 148/- per kg. The shoddy yarn of 2511 kg. (5091-2580) costing to Rs. 140/- to Rs. 145/- was sold in lesser rate i.e. between the range of Rs.105/- to Rs. 140/- per kg. There is no reason to sell the shoddy yarn in lesser rate.</i></p> <p><i>Moreover the assessee firm has not sold shoddy yarn in lesser rate prior to this</i></p>	<p><i>The AO failed to appreciate that there is no excess sale of 546 kgs of shoddy yarn in the range of Rs.105/= to Rs.145/=The goods were sold out of balance stock of shoddy yarn. Even at the year end, the unsold stocks of shoddy yarn of 2960 kgs was lying.</i></p> <p><i>The appellant sold the shoddy yarn at lesser rate as the rate at which the goods sold was the transaction price/bargained price /market value at the time of sale of goods. The selling price of the goods is driven by many factors at the time of sale including the age of goods. The goods sold was unsold for long period.</i></p>

	<p>period or later from this period. This also clears that the sale was shown only to cover up the cash sales. If the assessee firm had sold the stock of low quality, costing range from Rs. 42/- to Rs. 65/- per kg. then Gross profit ratio will definitely increase but in this case the GP ratio has been shown 22.02% whereas in the F.Y. 2015-16 the GP ratio was 36.35%, which comes down as compared to last year.</p>	<p>The GP rate of the firm did not go up as the same get compensated when the majority of the goods were sold at lesser margin as observed by AO.</p>
6.4	<p>A.O further observed that the total cash sales during the F.Y 2015-16 was Rs.5,60,204/- and cash sales during the F.Y 2017-18 was also negligible.</p> <p>Thus the assessee had not sold his goods in cash in earlier year (F.Y 2015-16) and in the next year (F.Y 2017-18).</p>	<p>The findings of CIT (A) is contradictory as at one para he observed that there was cash sale of Rs. 560204/- in FY 2015-16 & in other para he observed that there was no cash sale in the earlier year FY 2015-16.</p>

The reliance is placed on the following judgements to support the contentions of the appellant raised in above grounds;

[2021] 124 taxmann.com 123 (Delhi) Principal Commissioner of Income Tax, 20, Delhi v. Akshit Kumar (HIGH COURT OF DELHI)

(The quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Respondent-Assessee. In view of these facts, the sales made by the Respondent-Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources)

“11. From the aforesaid extracted portion of the impugned order, it is easily discernible that the enquiry under section 133B of the Act which has been strongly relied upon by the Appellant-Revenue, was

conducted in Financial Year 2016-17 i.e. post closure of the business. The learned ITAT has juxtaposed the same against the other relevant material on record. The crucial factor that prevailed upon the learned ITAT to decide the case in favour of the Respondent-Assessee was the history of the case. The learned ITAT went by the trading account in the earlier years viz. opening stock, purchase and sales, closing stock, gross profits and assessment made by the Department in AY 2007-08 when assessment was framed under section 143(3)/147 of the Act. The learned ITAT observed that since the entire books of account had been scrutinised and the Respondent-Assessee's income had been accepted, it also means that the entire opening stock, sales and closing stock made during the year stood accepted. Additionally, in respect of AY 2012-13 also, Respondent-Assessee's trading activities were subjected to detailed scrutiny under section 143(3) of the Act. In the said year, the AO had rejected the trading result and even enhanced the GP rate and made an addition in the trading account. **The learned ITAT thus held that in respect of AY 2012-13 the opening and closing stock and trading accounts including sales has not been disturbed. In these circumstances, the learned ITAT observed that in the impugned AY 2014-15, the audited balance-sheet reflected an opening stock of Rs. 19,53,29,660/- which stood accepted by the Department either under the scrutiny proceedings or by not selecting the return for scrutiny or by not taking any action to disturb such returned income. In these circumstances, it was held that the quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Respondent-Assessee. In view of these facts, the sales made by the Respondent-Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources. It thus manifests that the learned ITAT has taken into consideration the entire material placed on record including the report of the AO. The learned ITAT has applied the rule of consistency and rejected the enquiry made by the AO in the relevant assessment year. No doubt principles of res judicata are not applicable to the Income-Tax proceedings however, it is equally well settled law that rule of consistency is a well-established and recognised principle applicable to the Income-Tax proceedings. Pertinently, the Respondent-Assessee**

had closed his business in July, 2015 after selling all the stocks and the survey carried out at a later stage would not have strong evidentiary value. Besides, all these aspects are completely factual in nature and we are unable to find any perversity in the impugned order. The factual findings recorded by the Income-Tax authorities, have been examined by the last fact-finding authority i.e. the learned ITAT. In absence of any perversity in the impugned order, we are not inclined to entertain the present appeal, which urges questions of law that are entirely resting on findings of fact. Therefore, in our view no question of law, much less substantial question of law, arises for consideration. Accordingly, the appeal stands dismissed.”

(2022) 138 taxmann.com 141 Anantpur Kalpana v. Income-tax Officer (ITAT BANGALORE BENCH 'SMC-B)

(Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation)

9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. **Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.** It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of Associated Transport (P.) Ltd. (supra) on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam

Tribunal in the case of HirapannaJewellers (supra) on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted.

(2021) 128 taxmann.com 291 Assistant Commissioner of Income Tax, Central Circle - 1, Visakhapatnam v. HirapannaJewellers (ITAT VISAKHAPATNAM BENCH)

(Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again)

*9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. **Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again.** This view is also supported by the decision of Hon'ble Delhi High Court in the case of KailashJewellery House (supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld. CIT(A) and the same is upheld.*

6. Per contra, the Ld. DR stands by the impugned order.

7. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the assessee has made cash sales out of the opening stock and purchases made during the year duly supported with audited statement of account and

VAT Return. The authorities below has neither pointed out any discrepancy in the audited books of account nor rejected assessee's books. Further, the Ld. CIT(A) has made contradictory observation in one para that there was no cash sale in the earlier year FY 2015-16 whereas in another para he observed that there was cash sale of Rs. 560204/- in FY 2015-16. Merely, making a comparison of cash sales with the preceding assessment year in hypothetical manner bases on assumption, surmises and conjectures without supporting corroborative documentary evidence to disprove disputed cash sales as bogus sales cannot be approved.

8. There is no bar in making cash sales by the manufacturer. The AO has also admitted that there was cash sale of Rs. 560204/- in Financial Year 2015-16. Thus, the AO wrongly held that no goods in cash was sold during the earlier Financial Year 2015-16. The AO failed to appreciate that there was no excess sale of 546 kgs of shoddy yarn in the range of Rs.105/- to Rs.145/-. The Ld. AR explained that the goods were sold out of balance stock of shoddy yarn and even at the year end, the unsold stocks of shoddy yarn was 2960 kgs with the support of Paper book placed on record.

9. In the case of *“Principal Commissioner of Income Tax, 20, Delhi v. Akshit Kumar”*, (Supra) the Hon’ble Delhi High Court held that the quantum figure and the closing stock which stood accepted in the earlier years had to be taken as actual stock available with the Respondent-Assessee. In view of these facts, the sales made by the Respondent-Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources.

10. In another case of *‘Anantpur Kalpana v. Income-tax Officer’*, (Supra) the ITAT Bangalore Bench observed that since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation.

11. On similar fact, in the case of *“Assistant Commissioner of Income Tax, Central Circle - 1, Visakhapatnam v. Hirapanna Jewellers”*, the ITAT VISAKHAPATNAM BENCH has observed that since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of

Kailash Jewellery House and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd.

12. Considering the factual matrix of the present case and the judicial precedent as above, we hold that the disputed cash sales of Rs. 27,00,000/- by the appellant assessee were made out of Opening Stocks of Rs. 44,61,330/- and purchases made during the year which are offered for Taxation as revenue receipts as per audited books of accounts and financial statements filed before the authorities below and before us, duly supported with VAT Return. As such, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. Therefore, the addition of Rs. 27,00,000/- is deleted.

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

Order pronounced in the open court on 20.02.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order