

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)**

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2727/Del./2022
(ASSESSMENT YEAR : 2017-18)**

Vivek Garg,
C/o V.K. & Bros., Garh Road,
Hapur – 245 101 (Uttar Pradesh).

vs.

ITO, Ward 2(3)(5),
Hapur.

(PAN : ABYPG3427A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
Shri V. Rajakumar, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 06.03.2023

Date of Order : 10.03.2023

ORDER

This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC) dated 26.03.2022 pertaining to the Assessment Year 2017-18.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the Learned Assessing Officer had erred in law as well as on facts of the case in making an addition as income of Rs.1134095/- which ought not to have been made by the Learned Assessing Officer.

2. That the income as returned by Assessee amounting to Rs.443750/- in its right perspective ought to have been accepted by the Learned Assessing Officer.

3. Additions made by the Learned Assessing Officer Rs.1134095/- are intangible, illegal and without any basis in law laid down under the provisions of Income Tax Act which ought not to have been made by the Learned Assessing Officer.

4. That the basis adopted by the Learned Assessing Officer to make the said additions u/s 69 of I.Tax Act by enhancing the sales on estimate basis to the tune of Rs.1829734/- comparing to the previous assessment year is not permissible in law of Income Tax Act.”

3. The grounds in this case are effectively directed against the addition of Rs.11,34,095/- under section 69 of the Income-tax Act, 1961 (for short 'the Act'). During the course of assessment proceedings, it was noted by the AO that the assessee had deposited cash of amounting to Rs.24,67,000/- in his bank account during the demonetization period. The AO sought the necessary information from the assessee and reply was furnished by the assessee from time to time as and when called for by the AO. The AO also compared the sales for the period ranging from 01.11.2016 to 08.11.2016 with the period ranging from 01.11.2015 to 08.11.2015. In this regard, it was noted by the AO that the assessee had shown the excess sale from the period ranging from 01.11.2016 to 08.11.2016. Various details were called from the assessee, however, the same were not found to be satisfactory enough to justify the excess cash deposits of Rs.11,34,095/- by the appellant. The AO considered these extra sales as bogus sales which were used to justify the cash deposits made during the demonetization period. The AO also found the

contentions of the assessee beyond the preponderance of human probabilities.

4. Upon assessee's appeal, Id. CIT (A) confirmed the AO's action by concluding as under :-

“Further, considering the findings of the AO, I am in agreement with the finding of the AO that timing of cash sales claimed by the assessee coincides with the announcement of demonetization of old currency notes. It is beyond human probability to consider it as a mere coincidence. The assessee is not trading in such an item that the spontaneous and abnormal cash sales can be attributed to seasonal boom in the demand of such item. It is not the question of taxing extra sales but addition is because of the fact that the appellant could not satisfactorily explain the source of cash deposit in bank. The argument of the appellant that the cash deposit in bank is out of cash sales was not found tenable by the AO. Thus, in view of the detailed deliberation above, I am not inclined to interfere with the findings of the AO. The addition made by the AO is hereby confirmed. Grounds are dismissed.”

5. Against this order, assessee is in appeal before me. I have heard both the parties and perused the records.

6. Ld. Counsel of the assessee contended that without pointing out any defect in the books of account, the Revenue authorities have treated a part of sales as bogus and the corresponding deposit in the bank has been treated as unexplained. He submitted that when there was no defect pointed out in the books of account, there was no reason to treat the cash sales as bogus. Hence, he submitted that the addition is based on surmises and conjectures and cannot be sustained.

7. Per contra, Id. DR for the Revenue relied upon the orders of authorities below.

8. Upon careful consideration, I note that assessee is engaged in the wholesale business of bamboo. By comparing the previous year sales to the current year sales, the AO has come to the opinion that these are bogus sales and cash deposit out of them has been taken as unexplained. In this regard, I note that without pointing out any defect in the books of accounts, part of accounts cannot be rejected without any basis. Moreover, if the sales are bogus then there will be corresponding decrease in the profits also, hence the addition would be revenue neutral. Furthermore, as rightly pointed out by the Id. Counsel for the assessee, *de hors* any finding regarding defect in the books such an addition is not sustainable in law. Accordingly, I set aside the orders of authorities below and decide the issue in favour of the assessee.

9. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on this 10th day of March, 2023.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 10th day of March, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.