

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

BEFORE

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 1857/Del/2021

Asstt. Year: 2017-18

M/s Advance Chemicals, Khasra No. 268/1 and 268/2, Village Hamidpur, Delhi – 110 036. PAN AAEFA7026K (Appellant)	Vs.	ACIT, Circle, Rohtak. (Respondent)
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Assessee by:	Shri Gautam Jain, Adv.
Department by :	Shri Kanav Bali, Sr. DR
Date of Hearing :	20.03.2023
Date of pronouncement :	29.03.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi (**"CIT(A)"**) dated 29.10.2021 pertaining to Assessment Year (**"AY"**) 2017-18.

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

"1 *That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi has erred both in law and, on facts in upholding the determination of income made by the learned Assistant Commissioner of Income Tax, Circle Rohtak of the appellant firm at Rs. 1,65,17,111/- as against declared income of Rs. 1,05,45,330/- by the appellant company in an order of assessment dated 12.12 2019 u/s 143(3) of the Act.*

- 2 *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in dismissing the appeal by observing that “appellant opted or the Vivad Se Vishwas Scheme vide application dated 11.3.2021. Pursuant thereto, the PC IT, Rohtak has clarified the full and final payment of Rs. 10.000/- as taxes in terms of Form No. 5 dated 27.5.2021. In view of the above, the appeal is treated as infructuous as per clause 4(2) of the Direct Tax Vivad Se Vishwas Act, 2020”*
- 2.1 *Thus the learned Commissioner of Income Tax (Appeals) has failed to appreciate that appellant had filed a declaration in Form 1 and 2 dated 11.3.2021 under the Direct Tax Vivad Se Vishwas Act, 2020 (hereinafter referred to as “VSV Act”) and received Form No. 3 dated 8.4.2021 and Form No. 5 dated 27.5.2021 from the learned Pr. Commissioner of Income tax, Rohtak against an order dated 15.1.2019 u/s 272A(l)(d) of the Act and not in respect of order of assessment dated 12.12.2019 u/s 143(3) of the Act.*
3. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding an addition of Rs. 58,71,781/- representing cash sales made by the appellant and declared as income in the return of income furnished by the appellant and erroneously held as unexplained and taxable as income of the appellant u/s 68 of the Act*
- 3.1 *That finding of the learned Commissioner of Income Tax (Appeals) that assessee had deposited the unaccounted money as cash in SBN in the month of November, 2016” is factually incorrect, legally misconceived and wholly untenable.*
- 3.2 *That even the basis adopted that invoices for cash sales did not record all details of buyers is not based on correct appreciation of facts and hence untenable.*
- 4 *That the learned Commissioner of Income tax (Appeals) has also erred both in law and on facts in upholding an addition of Rs. 1,00,000/- representing alleged unexplained cash deposits in the bank account of the appellant and brought to tax under section 68 of the Act*
- 5 *That both the authorities below have trained the impugned order without granting sufficient proper opportunity to the appellant and therefore the same are contrary to principles of natural justice and hence vitiated.”*

3. Brief facts of the case are that the assessee firm is mainly engaged as consignee agent for chemical manufacturing companies and also traded chemicals in the open market in wholesale. For AY 2017-18, it e-filed its return on 01.11.2017 declaring income of Rs. 1,05,45,330/-. After initial processing of the return under section 143(1) of the Income Tax Act, 1961 **(the “Act”)**, the case was selected for complete scrutiny under CASS. Statutory notices along with questionnaire were delivered to the assessee on its e-mail address. In response, the assessee uploaded the requisite documents on its income tax e-filing portal. The Ld. Assessing Officer **(“AO”)** found that the assessee firm made cash sales amounting to Rs. 58,71,781/- in 15 days period only (i.e. from 26.10.2016 to 08.11.2016). He

further noticed that ratio of above sales of 15 days before demonetization to total sales for the year was 0.95. He sought explanation. The assessee vide its reply dated 09.12.2019 submitted that it had shown the cash sales in its books of account and in VAT returns and that there was sufficient stock for cash sales. The explanation was not acceptable to the Ld. AO who held that the assessee deposited its unaccounted money as cash in SBN in the month of November, 2016 which is being claimed as its sales. He, therefore added Rs. 58,71,781/- to the income of the assessee under section 68 of the Act. Further, the Ld. AO noticed cash deposit of Rs. 1,00,000/- during the month of December, 2016. On query, the assessee explained that during the said month cash was withdrawn from bank which in total was Rs. 1,00,000/-. The explanation of the assessee was not found to be tenable by the Ld. AO who held that the assessee had deposited unaccounted cash of Rs. 1,00,000/- in the month of December, 2016. Accordingly, he completed the assessment on total income of Rs. 1,65,17,111/- on 12.12.2019 under section 143(3) of the Act.

4. On appeal by the assessee, the Ld. CIT(A) treated the appeal infructuous observing that the assessee opted for the Vivad Se Vishwas Scheme vide application dated 11.03.2021, pursuant to which the Ld. PCIT, Rohtak certified the full and final payment of Rs. 10,000/- as taxes in terms of Form No. 5 dated 27.05.2021. This has brought the assessee before the Tribunal.

5. We have heard the Ld. Representative of the parties and perused the record. It has been brought to our notice that the assessee had filed a declaration in Form No.1 and Form No. 2 dated 11.03.2021 under the Direct Tax Vivad Se Vishwas Act, 2020 and received Form No. 3 dated 08.04.2021 and Form No. 5 dated 27.05.2021 from the Ld. PCIT, Rohtak against an order dated 15.11.2019 under section 272A(1)(d) of the Act. The Ld. CIT(A) mistook the same to be in respect of order of assessment dated 12.12.2019 passed by the Ld. AO under section 143(3) of the Act including therein the additions against which the assessee is still aggrieved. The Ld. AR submitted

that the orders have been passed by the Ld. AO/CIT(A) without affording adequate opportunity to the assessee and urged that the impugned order of the Ld. CIT(A) be set aside.

6. On the facts and in the circumstances of the case, we consider it just and fair as also in the interest of justice to set aside the order of the Ld. CIT(A) who incorrectly held that the disputed additions made by the Ld. AO have been settled under Vivad Se Vishwas Scheme. We, therefore, restore the matter back to the file of the Ld. CIT(A) with a direction to him to adjudicate the appeal of the assessee afresh and pass a reasoned order in accordance with law after affording reasonable opportunity of hearing to the parties. The Ld. DR had no objection. We order accordingly,

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 29th March, 2023.

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 29/03/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the	

Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	