

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.87/Bang/2023
Assessment Year : 2017-18

M/s. Santosh Enterprises, Anandapuram, Sagar Taluk, Shivamogga – 577 412. PAN : AAKFS 4558 F	Vs.	ACIT, Circle – 1, Shivamogga.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ravi Shankar, Advocate
Revenue by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	06.04.2023
Date of Pronouncement	:	03.05.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

This is an appeal filed by the assessee against the order passed by the National Faceless Appeal Centre (NFAC), Delhi, (DIN & Order No. ITBA/NFAC/S/250/2022-23/1048292750(1)) on 28.12.2022.

2. The sole and substantive issue involved in this appeal is the addition made by the AO under section 68 of the Income Tax Act, 1961 (hereinafter called ‘the Act’), of Rs.71,86,463 /- form the period 01.10.2016 to 08.11.2016 by reason that the huge cash sales were made in the impugned period which could not be substantiated by the assessee

and cash was deposited during the demonization period by the assessee and on appeal the cit(A) confirmed the order of the assessing officer (AO).

2.1. During the course of assessment proceedings, the AO raised various question and the assessee tried to respond to the same but the assessee could not file the proof of cash sales with all the necessary evidences such as copy of bills, detailed address of the persons to whom cash sales have been made, telephone numbers, PAN, etc., for the verification. Therefore, the huge sales made during before the demonetization could not be verified by the AO. The assessee also asked to furnish the cash book for verification for which the assessee firm has stated that it is not possible for them to furnish the details electronically due to more volume of bills, vouchers and books of accounts. But the assessee filed month wise purchase and sale and cash sales. Accordingly, the AO estimated per day cash sales of Rs.16,50,000/- for 39 days and calculated the excess / inflated sales of Rs.71,86,463/-. The actual sales were made by the assessee of Rs.7,05,41,463/- on the basis of average sales from 01.10.2016 to 08.11.2016 of Rs.18,09,268/- as admitted by the assessee and completed the assessment. The difference of Rs.71,86,463/- were treated as unexplained cash sales under section 68 of the Act and applied tax rates as applicable as per provisions of section 115BBE of the Act.

3. Aggrieved from the above order, the assessee filed appeal before the CIT(A). The CIT(A), after considering the detailed written

submissions, he upheld the actions of the AO and dismissed the appeal of the assessee.

4. Aggrieved from the order of the CIT(A), the assessee filed the appeal before the ITAT.

5. The learned AR reiterated the submissions made before the lower authorities and he has also filed Paper Book containing Paper Nos.1 to 127 which were also filed before the lower authorities. He further submitted that the turnover of the assessee for the year ending 31.03.2017 was Rs.140.05 Crores and the assessee had sufficient opening stock of Rs.14.85 Crores. The net income shown by the assessee during the year is Rs.27.43 Crores. The assessee has maintained complete set of books of accounts and the books of accounts have been audited by a qualified Chartered Accountant who has not pointed out any single deficiency in his audit report. All the entries in the books of accounts are supported by the supporting vouchers. He further submitted that the VAT authorities have also accepted the return filed in Form No.100 as per Rule 38 of the VAT and copy of the VAT returns are also enclosed. He also referred to cash receipts and cash deposited during the month into its bank accounts which are placed at Paper Book Page Nos.82, 83 and 84 and as per Page No.38, the month wise purchase and sales were also referred by the AR of the assessee and tried to explain the cash deposited during the impugned period as disputed by the AO . Therefore, the addition made by the AO under section 68 cannot be made because everything was explained and he also submitted that because of the huge pages of the

documents for the assessments as required by the AO, the details cannot be uploaded in the Income Tax website.

6. The learned DR relied on the order of the lower authorities and submitted that the AO has meticulously calculated the excess sales during the period of 39 days which starts from 01.10.2016 to 08.11.2016. The assessee had himself accepted the average sales per day of Rs.18,09,268/- during the disputed period. He also submitted that there is huge sales during the month of October but looking into the volume of purchase & sales there are huge differences. He also stated that the assessee could not respond to the query raised by the AO and the assessee also is unable to furnish the stock position and CIT(A) has rightly dismissed the appeal of the assessee. In view of this, he requested that the order of the authorities should be upheld.

7. After hearing both the parties and perusal of the orders of the authorities below, we notice that the AO has calculated the excess sales from 01.10.2016 to 08.10.2016 which is just before demonetization period and the AO has not accepted the explanation of the assessee. The assessee has furnished the month wise purchase and sales at Paper Book Page No.38 and we have also gone through the same, but on the same page we observed that there are huge differences in the purchase and sales from April to November, 2016, and the assessee could not furnish the cash book and other details required by the AO and we also noted that the assessee has not produced the daily stock position of the available goods for sales. Considering the totality of facts and circumstances of the case that the

matter should go back to the AO for the depth verification of purchase and sales from the beginning of the year upto the date of demonetization and the availability of cash generated and the assessee is also directed to furnish the necessary documents as required by the AO in the original assessment proceedings. With these observations, we remit this issue to the AO in above terms. The assessee is directed not to seek unnecessary adjournments for early disposal of the case. The AO shall decide the issue as per law.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated: 03.05.2023.
/NS/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.