

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'C': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.935/DEL/2020
[Assessment Year: 2013-14]**

ITO, Ward-13(4), Room No.306, Central Revenue Building, I.P. Estate, New Delhi-110002	Vs	JSM Proteins Pvt. Ltd. WZ-932, Baise Darapur, New Senior Secondary School, New Delhi-110015
PAN-AACCJ3737A		
Revenue		Assessee

Revenue by	Mr. Waseem Arshad, CIT(DR)
Assessee by	None

Date of Hearing	15.06.2023
Date of Pronouncement	21.06.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of the Ld. CIT(A)-5, New Delhi, dated 12.12.2019 pertaining to Assessment Year 2013-14.

2. Grounds of appeal raised by the assessee reads as under:-

“On facts & circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition of Rs.4,79,51,218/- on account of income determined u/s 68 of the Act, even when the assessee failed to establish the Identity, creditworthiness of creditors and genuineness of transactions.”

3. Brief facts of the case are that the assessee company is engaged in the business of trading of edible oils, ghee and milk products etc. During the year under consideration, it has submitted its return of income

declaring total income of Rs. 11,34,540/-. During assessment proceedings, it has been observed by the AO that in the bank account of assessee, cash of Rs. 4.81 crores is deposited, out of which the cash of Rs. 45.58 lakh was deposited during the last week of March 2013. On seeking the explanation, it was submitted by the assessee that it is dealing in the trading of edible oil, ghee, milk, sugar and other dairy products which also includes sale of fresh milk and curd etc. The sales are made to various dealers and the payment is received through banking channels as well as in cash. It is also stated that the total sales in cash is approximately 5.14% of the entire credits in the bank account. The sale has been disclosed for the year under consideration at Rs. 87,02,27,641/-. The contention of the assessee was not accepted by the AO as confirmation of sales from various persons are not duly stamped and there is no PAN etc. However, the cash deposit to the extent of Rs.1,48,782/- has been treated as explained, looking to the verifiable sales and cash payment received by the assessee is supported by confirmations, as mentioned in the assessment order. Accordingly, an amount of Rs. 4,79,51,218/- has been added by the AO, invoking provisions of section 68 of the Act as cash deposited in the bank account, stated to be sales, has not been fully found explained.

4. Against the above order, the Revenue appealed before the Ld. CIT(A).

5. The Ld. CIT(A) noted that the assessee has provided copy of its audited financial accounts and tax audit report, bank book, cashbook

and various books of accounts. The Id. CIT(A) held that the addition was not sustainable. He deleted the same by observing as under:-

“7.6. The total cash sale/deposit in bank account is almost 5.49% of the total sales, which cannot be termed as very high, especially looking to the nature of business and turnover of the appellant and considering that almost 94.5% payments have been received through banking channels. The bank account and sales ledger provide details of sales which includes cash sale also. There is no statutory requirement nor any bar to accept cash payments in the hands of appellant. The appellant has produced details of stock and other ledger accounts before AO and no infirmity has been found in the books of accounts of the appellant. No specific defect has been noticed nor books of accounts have been rejected by the AO. The gross profit shown for the year under consideration is @ 1.75%, in comparison to the immediately preceding year @ 1.59%. Therefore, the appellant has shown progressive profit margins during the year under consideration.

7.7 The addition has only been made on the basis that cash has been deposited for sales realization and confirmation of buyers does not have rubber stamp etc. In this regard, it can be said that it is undisputed that these amounts have been shown as sales and taken as revenue receipt in the profit & loss account. Therefore, the amounts have been duly accounted for as income towards sale and therefore, this addition has already been shown and accounted for and if taken again, this will result into double addition. The absence of rubber stamp on the sale confirmation will not impact.

7.8. Further, this being sales, duly accounted for, cannot be stated as credits because as per the accounting system, sales are the debit entries and the money has been realized. Therefore, the provisions of section 68 of the Act is not applicable to the present additions made.

7.9 Therefore, looking to the facts and circumstances of this case and in law, considering the details submitted and as discussed in the foregoing paragraphs, where it is found that the percentage of cash sale through which deposits made in the bank account is very low and justifiable looking to the nature of business, there is no bar in cash sales, no infirmity has been brought out by the AO in the audited books of accounts of appellant, the gross profit is incremental, stock has been duly maintained by the appellant, the amount added has already been reflected as sales proceeds and this addition will entail into double addition and the provisions of section 68 of the Act are not squarely applicable, this addition deserves to

be deleted. The A is directed to delete the addition. These grounds of appeal are allowed.”

6. Against the above order, the assessee is in appeal before us.
7. Since long time, nobody is representing the assessee. Today also, no one has come to represent the assessee, hence, we proceed to adjudicate the issue by hearing the ld. DR and perusing the record.
8. Upon careful consideration, we find that the Ld. CIT(A) has referred to various books of accounts and audited financial accounts, tax audit report and bank statement of the assessee but there is no mention or finding that the ld. CIT(A) has found these books of accounts were proper after examining the same. There is no mention of any books of accounts in the AO's order. Hence, whether the assessee has produced books of accounts and other necessary supporting documents to the AO or not is not clear. Hence, in our considered opinion and interest of justice demands this issue be remitted to the file of the AO. The AO is directed to consider this issue afresh in the light of various books of accounts referred in the order of the Ld. CIT(A). Needless to say, the assessee be granted opportunity of being heard.
9. In the result, this appeal by the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2023.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Delhi; 21.06.2023.

Shekhar,

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi