

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.204/Ind/2021
(Assessment Year:2012-13)

Niraj Kumar Sahu 4 M/s. Neeraj Electronics, Karim Complex Itwara, Bhopal	Vs.	DCIT 5(1) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: BISPS 0556 G		
Assessee by	Shri Arpit Gaur, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.06.2023	
Date of Pronouncement	22.06.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 27.08.2021 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2012-13. The assessee has raised following grounds of appeal:

"I am assessed to income tax by the ACIT 2(1); I have received the assessment orders and demand notice for A.Y. 2012-2013. Being aggrieved by the said orders he ought to have filled the appeal on the basis of following facts.

That the assessee is an individual who is involved in business of electronic goods and he derives his income from profit and gains of business. In the original assessment the assessing officer made an addition of Rs. 16,13,020/- to the income of the assessee for the A.Y.

2012-13 to which assessee filed the appeal before the Hon'ble CIT (Appeals)-1, Bhopal which the CIT(A) erred and rejected the claim of the assessee and an order was issued on 27-08-2021.

1. That the learned CIT(A) erred in considering the cash deposit of Rs. 16,13,020/- as unexplained money under section 69A of the Act. Section 69A says where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year. The bank account of State bank of India has been taken in books of account maintained and audited u/s 44AB of the Act. All the transactions have been accounted in the books of account and have been verified by the assessing officer and has accepted and no adverse findings on these books have been mentioned in the assessment order.

So as far the balance of State bank of India is not showing in the audited balance sheet of the assessee is concern, I submit that the balance of this account was transferred to the capital account in the final account. Since the assessee is a retailer most of the sales is in cash as mentioned in the cash book of the assessee, which thereafter is directly deposited by the customers and this cash sale has already been considered while calculating the net income of the assessee. Therefore, the cash deposit of Rs.16,13,020/- is already been considered while calculating net income and is not an unexplained money.

2. That the cash deposited was from the sale proceedings of the business which were included in turnover and were already a part of income of the assessee and therefore considering the cash deposits in State bank of India as unexplained money result in double taxation of the same income which is incorrect. This amount of cash deposit was accounted for in the books of accounts of the assessee which can be seen in the books attached and therefore the contention of the assessing officer that the cash deposited was not disclosed in the balance sheet of the assessee is incorrect.

2. The assessee is individual and proprietor of M/s Neeraj Electronic engaged in the business of electronic goods. The assessee filed his return of income for the year under consideration on 28.08.2021 declaring total

income of Rs.4,07,010/-. Subsequently, the assessment was reopened vide notice u/s 148 of the Act after recording the reasons for reopening of the assessment dated 15.03.2019 to assess the income escaped from assessment on account of cash deposit in the Saving Bank Account of the assessee to the tune of Rs.16,13,020/-. The assessee explained the source of deposit as turnover of his business of electronic goods however, the AO refused to accept the explanation on the ground that the assessee has shown the sales in the bank account with Oriental Bank of Commerce (OBC) whereas the deposit in question has been made in the Saving Bank Account of the assessee with SBI bank which cannot be accepted as sale proceeds. The AO accordingly made the addition of the tax deposit in the Saving Bank Account to the total income of the assessee while framing the assessment u/s 147 r.w.s. 143(3) on 18.12.2019. On appeal the Ld. CIT(A) confirmed the addition made by the AO.

3. Before us the Ld. AR of the assessee has submitted that all the entries in the Saving Bank Account are duly recorded in the cash book of the assessee, therefore, it is part of the sale proceeds. During the year under consideration the saving bank account with the SBI has been utilized by the assessee for the purpose of carrying out certain business transactions of his proprietorship concern. Such bank account was utilized by the assessee to facilitate the cash collection made from the debtors of outstation and nearby areas of Bhopal. The cash collection so made by the assessee from such outstation debtors were deposited in this bank account and were immediately withdrawn, from time to time for utilizing the same in the regular course of business activity. The remaining cash as per the regular cash book was deposited by the assessee from time to time in the primary bank account of his proprietorship concern maintained with OBC. He has explained that the reason of utilizing the Saving Bank Account with SBI for business transaction is the availability of branches and ATMs of State Bank of India in sub-urban and rural areas which was not in case with the Oriental Bank of Commerce. The assessee has

declared the turnover which includes the deposit in the Saving Bank Account with SBI, books of account of the assessee were duly audited as per the provisions of section 44AB of the Act without any qualification. The entire banking transaction as getting reflected in the saving Bank account with SBI have been duly taken into consideration by the assessee and are recorded in the regular books of account of his proprietorship concern. The assessee offered the tax on the entire sales turnover and therefore the addition made by the AO is not justified and further it amounts to double taxation of the same amount. The assessee has shown the total sales of Rs.2,24,00,358/- during the year under consideration out of which Rs.1,51,32,011/- have been made in cash and balance was credit sales. Thus, the Ld. AR has explained that out of the credit sales of Rs.72,68,347/-, realization from the debtors to the extent of Rs.47,17,854/- (Rs.1,51,32,011 + Rs.47,17,854) the sales proceeds/realization from debtors of outstation areas have been deposited by the assessee in the saving bank account with SBI and it was subsequently, withdrawn and incorporated in the regular cash book of the proprietorship concern. He has also referred to the monthly cash flow statement of the proprietorship concern and submitted that the deposit made in the Saving Bank Account with SBI and withdrawal from the said bank account is duly reflected in the cash book and cash flow statements. Therefore, the source of cash deposit has been duly explained by the assessee as turnover of the assessee. He has relied upon the decision of the Mumbai Benches of the Tribunal in case of *Jaspal Singh Sehgal vs. ITO 83 taxmann.com 246* as well as decision of Ahmedabad Benches of this Tribunal in case of *Sudhirbhai Pravinkant Thaker vs. ITO 88 taxmann.com 382*. Thus, the Ld. AR has submitted that cash withdrawal prior to cash deposit be considered as the source of the deposit and therefore, only peak credit can be taken for addition if any. Alternatively, the Ld. AR has pleaded that only GP rate may be considered as income on undisclosed turnover.

4. On the other hand, Ld. DR has submitted that the AO has clearly given finding that from the perusal of the balance sheet it is seen that the assessee has not disclosed his SBI Account, therefore, the claim of the assessee that said cash deposit of Rs.16,13,020/- was from sales of electronic goods and recorded in the cash book is not correct. The assessee was required to explain each and every credit and debit entry in his Saving Bank Account and how they incorporated in his books of account. The assessee has failed to explain the source of the cash deposit as well as the same is recorded in the books of account. Therefore, the AO has rightly treated the said amount as unaccounted cash. He has relied upon the order of the authorities below.

5. We have considered the rival submission as well as relevant material on record. It is apparent from the record that the assessee has made regular deposit and withdrawal transactions in the Saving Bank Account with SBI. All other business transactions are done in Bank Account with OBC. The assessee has not furnished the details of the transactions with bank account with OBC to show how much cash sales is deposited in the said bank account and remaining can be considered as deposit in the saving bank account. Though the assessee has submitted that the Saving Bank account was used by the assessee for collection from debtors in the sub-urban and rural areas outside the city as the ATMs and branches of SBI are available in those areas. However, in absence of the complete details of the deposit made in the both bank accounts it cannot be conclusively determined that the deposit made in the SBI account has been declared by the assessee as his turnover. Accordingly, in the facts and circumstances of the case when the frequent deposits and withdrawal transactions are made in the Saving Bank Account throughout the year and almost nil balance was available as on 31.03.2012 then the deposit in the Saving Bank Account in our considered view represents turnover of the assessee. Since the assessee has not disclosed this bank account in the return of income, therefore, deposit in the saving bank account is considered as undisclosed turnover and GP rate on the said turnover

would be added to the total income of the assessee instead of the entire deposit. Accordingly, the AO is directed to add only G.P. rate on the deposit made in the Saving Bank Account with SBI of Rs.16,13,020/-.

6. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on 22.06.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 22 .06.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore