

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 1006/DEL/2023 [A.Y. 2017-18]

Shri Sanjeev Kumar
T-589, Baljeet Nagar
New Delhi

Vs.

The Income tax Officer
Ward - 51(2)
New Delhi

PAN: BNHPK 4855 Q

(Applicant)

(Respondent)

Assessee By : Shri P.C. Yadav, Adv

Department By : Shri Om Prakash, Sr. DR

Date of Hearing : 03.07.2023

Date of Pronouncement : 07.07.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 31.03.2023 by the NFAC pertaining to Assessment Year 2017-18.

2. The sum and substance of the grievance of the assessee is that the CIT(A)/NFAC erred in confirming the addition of Rs. 16,79,024/- made by the Assessing Officer u/s 69A of the Income-tax Act, 1961 [the Act, for short].

3. The representatives of both the sides were heard at length, the case records carefully perused. We have also considered the documentary evidences brought on record in light of Rule 18(6) of the ITAT Rules.

4. The peculiar facts are that the Assessing Officer proceeded to frame assessment u/s 143(3) of the Act by considering the cash deposited during the denomination period on the ground that as per information, there is substantial large cash deposits during the demonetization period and abnormal increase in cash deposited during the denomination period as compared to pre-demonetization period during F.Y. 2016-17 relevant to A.Y 2017-18.

5. The Assessing Officer made several enquiries in respect of the gross amount credited to the account in cash totaling to Rs. 1,21,54,500/-. The Assessing Officer not only made enquiries from

banks but also made enquiry from M/s Gujarat Co-operative Milk Marketing Federation Ltd, popularly known as AMUL.

6. It is strange to find that though AMUL confirmed the transaction and submitted copy of ledger account of the assessee from 01.04.2016 to 31.03.2017 showing total sales made to him and payment received thereon, AMUL also furnished item-wise break up of total purchase of M/s Aflatoon Corner [Proprietary concern of the assessee] for F.Y. 2016-17 and made it categorical that it cannot certify actual sale as AMUL has no actual market sales data if M/s Aflatoon Corner and have only its primary sales data.

7. On such information, the Assessing Officer completely changed the track of assessment which started from substantial cash found to be deposited during demonetization period and now went on to consider the profit margin on the sales figure reported by AMUL for the year under consideration at Rs. 9,86,84,085/- and estimating the profit, made addition of Rs. 16,79,024/, which addition was challenged before the Id. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee drew our attention to the ledger account submitted by AMUL and pointed out that AMUL has only made an observation indicative per litre margin of the assessee in respect of products sold by AMUL to the assessee and such indicative margin is at Rs. 16,79,024/-.

9. Basis this, addition has been made by the Assessing Officer. It is the say of the ld. counsel for the assessee that even Form No. 26 AS shows that AMUL has made total payment of Rs. 12,52,788/-, which receipt has been shown by the assessee in its return of income which is at page 34 of the Paper Book. The ld. counsel for the assessee vehemently stated that the entire addition has been made on illogical assumption and erroneous facts.

10. Per contra, the ld. DR supported the findings of the Assessing Officer.

11. The undisputed fact is that as per Form No. 26 AS, total payment made by AMUL is at Rs. 12,52,788/-. It is also an undisputed fact that the same has been shown as sales/gross receipts in the return of income filed by the assessee. It is also not in dispute that the

Assessing Officer has proceeded by issuing show cause notice in respect of cash found to be deposited during demonetization period amounting to Rs. 1,21,54,500/-. It is also an undisputed fact that the impugned addition has been made without notice, which is in gross violation of principles of natural justice *audi alteram partem*.

12. Considering the facts of the case in totality, we do not find any merit/logic in the impugned addition. The Assessing Officer is directed to delete the same.

13. In the result the appeal of the assessee in ITA No. 1006/DEL/2023 is allowed.

The order is pronounced in the open court on 07.07.2023.

Sd/-

[ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 07th JULY, 2023.

VL/

Copy forwarded to:

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

Asst. 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	