

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

BEFORE

SHRI G.S. PANNU, HON'BLE PRESIDENT

AND

SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.1949/Del/2022

Asstt. Year: 2017-18

| | | |
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| M/s. Mahesh Wood Products Private Limited 2042, Katra Tambacco, Khari Baoli, Central Delhi – 110 006 PAN AAACM0118Q | Vs. | Asstt. Commissioner of Income Tax, Central Circle-13, New Delhi. |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|---------------------------|
| Assessee by: | Shri Suresh Gupta, CA |
| Department by: | Dr. Maninder Kaur, Sr. Dr |
| Date of Hearing | 13.06.2023 |
| Date of pronouncement | 26.07.2023 |

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against the order dated 19.07.2021, passed by Ld. Commissioner of Income Tax (Appeals)-26, New Delhi for the quantum of assessment passed under section 143(3) of the Income Tax Act, 1961 for the assessment year 2017-18.

2. In the grounds of appeal, the assessee has challenged addition of Rs. 60,00,000/- made under section 68 r.w.s. 115BBE of the Act treating the cash deposit during the demonetization period as unexplained cash credit. The other issues which have been raised is with regard to addition of Rs. 3,60,659/- by treating the difference in outstanding balance of sundry creditors as unexplained credit.

3. Brief facts are that Assessee Company is engaged in the business of manufacturing and trading of 'katha'. It has filed return of income on 06.11.2017 declaring total income of Rs. 49,98,640/-. The Ld. Assessing Officer on the scrutiny of ITR noted that assessee has deposited cash of Rs. 1,26,00,000/- during the period of demonetization from 09.11.2016 to 30.12.2016 in its bank account. From the perusal of the cash book produced by the assessee for the financial year 2015-16 and financial year 2016-17, he has noted figure and details of month-wise cash sales and found that the cash sale of financial year 2015-16 was much less. In response to the show cause notice, the assessee submitted that the source of cash deposit is out of cash sales of katha and the cash deposit was out of regular business practice of cash sales and a sum of Rs. 1,26,00,000/- was deposited during the demonization period is merely 23.24% of total cash deposited in the entire financial year 2016-17 from time to time. In support, the assessee has filed regular cash book, sale invoices, stock register and VAT return. From the books and bank statement it was shown that the sales proceed in

cash was being deposited in the bank on monthly basis. The assessee company also maintained cash in hand as per the books, which was approximately Rs. 67 lakhs at the end of the month upto 31st October, 2016. In the month of October only cash sales was of Rs. 1,13,73,406/- and there was a cash deposit of Rs. 38,10,000/- and also withdrawal of Rs. 27,25,000/- in the same month. However, the Ld. Assessing Office rejected the assessee's explanation on the following grounds:-

"a. The sale bills showing cash sales were below Rs.2 Lakh each and" none shows the name of the purchaser, its contact number, signature of buyer taking delivery of goods, complete description of good sold etc leaving the claim as un-verifiable/unbelievable.

b. There was a substantial increase in the ratio of cash sale to the total sale during the year under consideration. The ratio jumped three times from 6.09% as on AY 2016-17 to 18.66% in AY 2017-18 for no explainable reason.

c. The claim that withdrawal of cash from its bank account leading to accumulation of cash was to meet business expenses was also not found acceptable in the absence of any justification as to why it had to make withdrawals when there had been sufficient cash in hand available on those dates on account of cash sales. Therefore, accumulation of cash in hand by frequent cash withdrawal without any specific purpose is not plausible.

e. There is abnormal increase in cash sale during the month of Oct and Nov 2016 as compared to corresponding period FY 2015-16. Such abnormal increase in cash sale in pre

demonetisation period is not as per the past trend and hence source of cash deposit in bank account cannot held to be from alleged cash sale.

f. There is increase in average cash in hand in FY 2016-17 which is shown to be Rs.68.92 Lacs as compared to FY 2015-16 at Rs.30-40 Lacs and also substantial increase in cash sales from Rs.81.23 Lakhs in FY 2015-16 to Rs.6.07 Crore in FY 2016-17. The average cash in hand during April to Aug 2016 was around Rs.40-50 Lakhs which has seen substantial increase of around Rs.71 Lakhs in Oct 2016 which is because of substantial increase in cash sales in Oct 2016. The cash balance therefore as on 08.11.2016 is at the level of Rs.1.50 Crore which is the source of the SBN deposits in demonetization period. It was alleged by the AO that the appellant company was trying to justify by showing huge sales in the month of oct 2016. Hence, the increase in cash sale in oct 2016 is managed by appellant as the VAT returns for the said month were not submitted till announcement of demonetization on 08.11.2016 and hence cash book and cash sales are managed by appellant company through inflation of the same.”

4. Ld. Assessing Officer finally held as under:-

“The average cash in hand in FY 2015-16 is around Rs. 30-40 lacs and the only cash in hand on 08.11.2015 was shown to be 68.92 lacs and the opening cash in hand is shown to be higher in the months of October, November & December 2015 Compared with this average cash in hand in the FY 2016-17 has shown an increase from April to August, 2016 the average cash in hand is

shown of around 40-50 lacs. Further, the cash in hand in Oct, 2016 has shown an increase of around 71 lacs and it appears that in 8 days of November huge cash sales have been booked and because of which average cash in hand in 8th November is shown as 1.50 cr. which clearly appears to be managed by the assessee as the VAT returns for the month of October have not been submitted and accordingly, the cash book as well as the cash sales has been managed by the assessee.

The cash sales shown in FY 2015-16 is only 81.23 lacs whereas in the FY 2016-17 the cash sales has shown jump of Rs. 6.07 cr. and it appears that the assessee has been trying to justify the cash deposit of demonetized currency because of such huge cash sales in the month of October, 2016. Thus, the assessee financial results i.e. cash sales in the month of October and opening cash in hand in 8th November appears to be managed and accordingly is not reliable. Accordingly, the same is rejected to limited extent. However, as the average cash in hand from April to September, 2016 comes to around 45-50 lacs accordingly, based on the same ratio and also considering the increase cash sales made during the first 6 months of FY 2016-17 as compared to FY 2015-16 the total opening cash in hand on 8 nov,2016 should be in the range of 50-60 lacs and accordingly, 66 lacs cash deposit is treated as explained deposits and the remaining amount of Rs. 60 lacs is treated as unexplained income available with the assessee in the form of cash prior to demonetization period and the same is added to his total income tax act to be taxed in terms of section 115BBE of the Act. Penalty proceedings are being initiated separately u/s 271AAC of the Act.”

5. The Ld. CIT(A) has confirmed the order of the Assessing Officer after noting that cash sales, cash in hand and cash deposited is high only during the period October, 2016 and upto to November, 2016 and the sales reported in this period is below Rs. 2 lacs which are not verifiable. He has also confirmed that deposits of tax under section 115BBE details of cash in hand for various months during the financial year 2016-17 as incorporated in the appellate order is reproduced hereunder:-

| Month | Opening Cash in hand | CASH SALES | Cash Deposit in Bank | Cash Withdrawal from Bank | Closing Cash in hand |
|---|----------------------|--------------------|----------------------|---------------------------|----------------------|
| April | 3479867 | 2737298 | 2850000 | 4000000 | 6082914 |
| May | 6082914 | 7748782 | 8550000 | - | 3811556 |
| June | 3811556 | 7415439 | 7650000 | 220000 | 2340200 |
| July | 2340200 | 9246315 | 5825000 | - | 44,58,019 |
| August | 4458019 | 5199097 | 5025000 | 5000000 | 8134338 |
| September | 81,34,338 | 37,13,563 | 31,00,000 | 1,00,000 | 71,08,701 |
| October | 71,08,701 | 1,13,73,406 | 38,10,000 | 27.25,000 | 1,50,57,216 |
| Upto 8th November | 1,50,57,216 | 29,81,670 | 9,50,000 | | 1,63,13,476 |
| 9 th Nov. To 30 th Nov. | 1,63,13,476 | 7,92,009 | 1,06,00,000 | 1,00,000 | 47,86,273 |
| December | 47,86,273 | 44,41,464 | 20,00,000 | 25,000 | 54,13,158 |
| January | 54,13,158 | 50,89,421 | 24,50,000 | - | 59,64,484 |

| | | | | | |
|----------|------------|-------------|-------------|-------------|-----------|
| February | •59,64,484 | - | 2,34,000 | 47,00,000 | 80,11,171 |
| March | 80,11,171 | - | 11,76,700 | 23,50,000 | 62,31,880 |
| | | | | | |
| | | 6,07,38,464 | 5,42,20,700 | 1,92,20,000 | |

6. We have heard both the parties, perused the relevant findings given in the impugned orders as well as material preferred to before us. The Ld. Counsel for the assessee before us submitted that the Assessing Officer has mainly compared increase of cash sales in assessment year 2017-18 and assessment year 2016-17. He clarified that in assessment year 2016-17 the appellant business had gone down and the average annual sale of was only 13.35 crores, whereas in past it was Rs. 35 crores i.e., till assessment year 2015-16 and earlier also was around this figure only. The reason for dip in sale last year was that earlier assessee had bulk orders from single buyer, M/s Dharmpal Satyapal for supply of katha which was upto 93% and in assessment year 2015-16 it went down to 58.97%. Thereafter, in assessment year 2017-18 assessee started making bulk sales on retail basis to various other customers. It was due to this reason there was a reduction of almost 60% of sales in assessment year 2016-17. From assessment year 2017-18 assessee got bulk orders and thus sales increased and which continued till assessment year 2018-19 also where the sales was much more than 2017-18. Thus the comparison of the sales for assessment year 2016-17 on the facts of the present case cannot be the benchmark. This year the assessee had again made sales

of Rs. 32.55 crores. He further pointed out that in the first quarter of assessment year 20018-19 there was a sale of Rs. 2.08 crores which matches the quarterly turnover of Rs. 1.50 crores for assessment year 2017-18.

7. Regarding observation of Ld AO that cash sale of Rs.1.13 Crore in Oct 2016 is not plausible is not correct as in July 2016, the cash sale of the appellant was Rs.92,00,000/- and in that background the level of sale in Oct with increase of Rs.21,00,000/- is not something unbelievable. Regarding the objection that buyers name are not mentioned in bills, Ld. Counsel submitted that there is no requirement under sec 139A r.w.r. 114B to mention the name and identity of buyers when the sale don't exceed Rs.2,00,000/-. In no case, the cash sale per bill is of the amount exceeding Rs.2,00,000/-. Copies of the sale bills have been placed in paper book at pages 72-124. He also relied upon the judgement of Hon'ble Bombay High Court in **R.B.Jessaram Fatehchand (Sugar Deptt) VS. CIT**, (1970) 75 ITR 33 (Bom), wherein Court has held that sales can be in cash and it is hardly necessary for the seller to bother about the name and address of the purchaser.

8. He further submitted that the appellant business is covered by Central Excise regulatory mechanism being registered under the Excise Act and the Excise department keeps close monitoring on the activities of the manufacturers registered under the Central Excise Act. The genuineness of sales accepted by the Central Excise department cannot be doubted.

9. Regarding the objection of the Ld. AO frequent cash withdrawals from the bank despite sufficient amount of cash available, he submitted that the assessee had major cost centre at Bahalgarh Factory, Haryana where the assessee had no bank account and the cash collection used to be at the head office/sales office at Khari Baoli, Delhi. The appellant is required to maintain sufficient amount of cash at its factory where bank facilities are scarcely available due to remoteness of the location. There is a situation where sometimes, the cash collection is kept in the custody of the employee and the cash in his custody not available for cash expenditure, in case, the cash contingencies arises, the assessee has no option but to withdraw cash despite sufficient amount of cash in hand technically available. Some cash payments are required to be made at the head office also, and for meeting such cash requirement, sometime bank withdrawal is required to be made for meeting emergencies and also for making regular expenses due to the reason that the cash collection is transferred to the factory or custody of responsible person. In that situation, the cash withdrawals from bank have to be made despite the cash in hand not available at the point where cash expenses are due to be made.

10. Thus, he submitted that all the source of cash deposits in the bank account during the demonetization is fully verified from the sales and the books of account.

11. On the other hand Ld. DR strongly relied upon the order of the Assessing Officer and Ld. CIT(A) and submitted that one has to see the corresponding sales for the correspondence period of

the earlier year in order to see when the assessee's explanation is correct or not. Further Assessing Officer has noted that assessee has made sales of less than Rs. 2,00,000/- for which there is no details and name of the purchasers. Therefore it was difficult to verify the purchases. Thus the explanation given by the assessee was not tenable on the facts and circumstances of the case. Therefore addition has rightly been made.

12. On perusal of explanation and material placed on record, it is seen that the cash sales in the trade of the assessee had been common feature and assessee has been making retail cash sales to various parties. The Assessing Officer has tried to compare the cash sales from assessment year 2016-17 wherein it has jumped from 6.09% to 18.66%. Before us Ld. Counsel has demonstrated that earlier assessee's sale were to the tune of Rs. 35 crores which took a nosedive in assessment year 2014-15 for the reason that one of the bulk purchaser M/s. Dharmpal Satyapal who are purchasing more than 97.5% had reduced from purchases substantially which has led to low production of katha. Thereafter assessee started venturing into retail sales to various other parties and was able to make substantial sales in this year and reached to a turnover of more than Rs. 32 crores. Thus under these circumstances, it would be inappropriate to benchmark the corresponding sales figure of assessment year 2016-17 from assessment year 2017-18. Before us Ld. Counsel has also shown that after the first quarter of assessment year 2018-19 the assessee's quarterly cash sales have been more than during the demonetization period. Thus the assessee's explanation gets corroborated by this fact and the cash sales had

increased from April 2016 onwards. From the month wise sales in the year 2016 also, it is seen that in the month of July 2016 there was a cash sales of Rs. 92,26,315/- with a peak of the cash sales of Rs. 1,13,26,406/- in the month of October, i.e., month prior to the date of demonetization (8th November, 2016). If one sees the figure of cash deposit in bank, it can be seen that assessee has been making regular cash deposit in bank which in the month of April was Rs. 28,15,000/- and reached to its peak of Rs. 85,50,000/- in the month of May and in the month of June the cash deposits have been much higher as compared to cash deposit in the bank in October, 2016 which was Rs. 38,10,000/-. As on 8th November, 2016 assessee had closing cash in hand in the books at Rs. 1,63,13,476/- which has been the source of deposits along with the sales of November to December wherein the assessee has made deposits in the bank account. Thus, the source of deposit are duly appearing in the cash book and nowhere the cash book or the books of account and the sales shown by the assessee in audited account have been disturbed by the Ld. Assessing Officer.

13. One of the main allegations of the department is that the cash sale below Rs. 2 lakhs does not contain the details of the purchasers in the sale bills or its contact numbers. However, as placed in the paper book we find that the assessee for any sales made for less than Rs. 2 lacs even for the period much prior to demonetisation and also post demonetisation, assessee is not maintaining the details of buyers. The same feature is permeating in all the period where on cash sales the details of buyer's name have not been mentioned. This is more so, because there is no

requirement under section 139A r.w. rule 114B to mention the name and identity of the buyers where the sale do not exceed Rs. 2 lakhs and in the case of assessee the cash sales do not exceed Rs. 2 lakhs. Thus, the basis for drawing adverse inference that the cash sales of Rs. 62,00,000/- which does not have details of the buyer cannot be sustained.

14. Another point which has been raised that while the assessee is withdrawing huge cash or maintaining cash balance, it has been submitted that the same were used for making regular expense and purchases. Once all these withdrawals of cash balance is out of sales duly recorded in the cash books and the books of account, then it cannot be held that it was an unusual feature only in this year particularly during the period of demonetization period because this has been a regular feature of the assessee.

15. One very important fact is that out of total cash deposit of Rs. 1,26,00,000/- of SBN notes, it is seen that there is a brought forward cash balance as on 08.11.2016 of Rs. 1,63,13,476/-, out of which Assessing Officer has accepted Rs. 60,00,000/-. He has drawn adverse inference even when there is no difference in the cash sales or discrepancy in the books of account and all the source of cash are from the books of account and part of sale. Accordingly, we do not find any reason for sustaining the addition of Rs. 60,00,000/- and the same is directed to be deleted.

16. Lastly, with regard to the addition on account of variation in the balance, the Assessing Officer had called for information from

the sundry creditors. He noted that from the information received, there was a difference in the balance shown by these parties, M/s. Aryan Enterprises, M/s. Ions Flow and M/s. New Rajdhani Packers & Movers. The difference worked out on these three accounts was Rs. 3,60,659/-. Before us the Ld. Counsel submitted that there had been variations in the creditors' balances as per assessee's books and the same were found from the confirmation received from the parties. With the first party, M/s Aryan Enterprises the difference was of Rs. 1,50,592/- and the reason for difference is opening difference of Rs.2,09,548/- which is evident from the chart on page 10 of the order and this difference cannot be considered for addition u/s 68 being the credit not pertaining to year under consideration. The other two parties namely, M/s Ions Flow Rs.54,020/- and M/s New Rajdhani Packers & Movers Rs. 10,337/-, these amounts cannot be added u/s 68 as the amount payable as per assessee books of account is lower than the amount acknowledge by the respective parties. In case of M/s Taparia Enterprises Rs. 1,45,710/-, the said party did not show any outstanding due to the reason of accounting mistake done by it which was rectified by the said party in succeeding financial year 2017-18 which is evident from the document in the paper book at page 266.

17. After considering the submissions made by the parties and on perusal of the impugned order, we find that the sole reason for addition by the Assessing Officer is that there is difference in the books shown by the assessee and the balance is shown by the parties (sundry creditors). From the perusal of the record it is seen that in so far as the difference with M/s. Aryan Enterprises

of Rs. 1,50,592/- there was difference in opening balance at Rs. 2,09,548/- which cannot be roped in for making the addition under section 68, because it is not credit pertaining to the year under consideration. Similarly in the case of other two parties, i.e., the difference of M/s. Ions Flow of Rs. 54,020/- and M/s. New Rajdhani Packers and movers of Rs. 10,337/- the amount payable as per the assessee about books which is lower than the amount acknowledged by the respective parties. Therefore, no adverse inference can be drawn.

18. Lastly in the case of M/s. Taparia Enterprises of Rs. 1,45,710/- it has been shown that it was a mistake done by the said party which has been rectified in the succeeding financial year therefore on this count also no addition can be made. Accordingly the addition made by the Assessing Officer and sustained by the Ld. CIT (A) is directed to be deleted.

19. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 26th July, 2023.

sd/-

(G.S. PANNU)

PRESIDENT

MEMBER

Dated: 26/07/2023

Veena

sd/-

(AMIT SHUKLA)

JUDICIAL

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| 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 | |
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