

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 240/Srt/2021 (Assessment Year 2016-17)

(Physical hearing)

Chiragbhai S. Gadhiya, 79, Mani Nagar Society, Nana Varachha, Nr. Sarthana Jakat Naka, Surat-395006. PAN No. AJYPG 7927 K	Vs.	I.T.O., Ward-3(2)(6), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Miss Chaitali Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	31/05/2023
Date of pronouncement	28/07/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 25/08/2021 for the Assessment Year (AY) 2016-17 wherein the assessee has raised following grounds of appeal.

- “1. On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in making addition of Rs. 24,91,375/- on account of unexplained cash credit u/s 68 of the I.T. Act, 1961.*
- 2. On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in rejecting books of account of the assessee.*
- 3. It is therefore, prayed that above penalty levied by the assessing officer may please be deleted.*
- 4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that the assessee is engaged in the business of textile value addition work and job work on retail basis. The assessee filed return of income for A.Y. 2016-17 on 26/03/2017 declaring income of Rs. 3,23,570/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that during demonetization period from 09/11/2016 to 31/12/2016, the assessee made cash deposit of Rs. 62.00 lacs in bank account maintained with Bank of Baroda, therefore, the case of assessee was scrutinized as per guidelines issued by Central Board of Direct Taxes (CBDT) vide Circular No. 225/391/2017 dated 24/11/2017. During the assessment, the Assessing Officer asked to furnish cash from various persons, details of textile labour income and income on sale of plot. The Assessing Officer recorded that no documentary evidence was furnished, proof of genuineness of certain transactions. The assessee was also asked to furnish source of cash in hand in his balance sheet as on 31/03/2016 with necessary evidence. The assessee furnished cash book of F.Y. 2015-16 stating the source of cash, as such, cash was received from Sanjay Silk Mills, Vitrang Creation, Yagnika Silk Mills and Zapiya Fashion. In order to verify the transaction, the Assessing Officer issued notice under Section 133(6) of the Income Tax Act, 1961 (in short, the Act) at the address of the parties. The Assessing Officer recorded that all notices were returned back with comments "incomplete/address not known". The Assessing Officer

deputed Inspector of Income Tax to verify the existence and the capacity of creditors. The Assessing Officer recorded that the Inspector furnished adverse report from whom the cash was received. The Inspector reported that no such parties are available at the address filed by the assessee. The Assessing Officer issued notice dated 30/08/2018 asked the assessee to file confirmation, return of income and proper address of all the parties to prove the genuineness of transaction. The Assessing Officer further recorded that no response was received from the assessee. The Assessing Officer issued a final show cause notice dated 27/09/2018. Contents of show cause notice is recorded in para 5 of assessment order. In the show cause notice, the Assessing Officer asked as to why the cash in hand of Rs. 24,91,375/- as on 31/03/2016 should not be added for A.Y. 2016-17 as unexplained cash credit. The Assessing Officer recorded that assessee filed reply to show cause notice. The contents of reply is not recorded by Assessing Officer. The Assessing Officer recorded that such reply is not found acceptable. The Assessing Officer further recorded that authorised representative of assessee argued that the debtors from whom cash was received was part of audited balance sheet for A.Y. 2015-16 and assessee made sale to them in A.Y. 2015-16 on credit basis. Such contention was also not accepted by Assessing Officer by taking a view that the assessee failed to prove the genuineness of transaction by not furnishing confirmation,

ITR and proper address. The Assessing Officer treated the opening cash balance as on 30/03/2016 of Rs. 24,91,375/- as income from unexplained sources in the assessment order dated 30/10/2018 passed under Section 143(3) of the Act.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed his detailed written submissions on e-filing portal of the department on 02/02/2021. Such submission of assessee are recorded in para 6.2 of order of Id. CIT(A). The assessee in his submission submitted that he engaged in textile value addition business and also engaged in development of plots. The assessee also engaged in grey fabric manufacturing and trading business. The case of assessee was selected for limited scrutiny whether cash in hand shown in return of income is correct by issuing notice under Section 143(2) of the Act on 19/09/2017. Thereafter notice under Section 142(1) was issued for seeking various information. The assessee furnished reply by way of e-reply alongwith covering letter and by furnishing evidence of bank book and statement of all banks, Income tax return, computation of income, trading account, Profit & Loss Account, balance sheet and audit report for A.Y. 2015-16 and 2016-17 with cash book. The Assessing Officer issued show cause notice for making addition of cash receipt from sundry creditors. The assessee filed detailed reply in response to the show

cause notice. The reply was not considered and assessment order was passed by making addition under Section 68 of the Act of cash credit of Rs. 24,91,375/-. The assessee submitted that he made sales of fabric of Rs. 1.63 crore for the year and out of the said sale, payment of some parties were pending for realization which was shown under sundry debtors in the balance sheet of Rs. 29,94,233/-. Books of assessee was duly audited. Copy of sale register of entire year wherein the parties remain as sundry creditors were furnished alongwith sales bills. The assessee furnished details of sundry debtors realized in cash and the same was credited in the cash book. The assessee again furnished details of cash flow for the year. The assessee submitted that the Assessing Officer made addition on the ground that the assessee failed to establish the identity of creditor, capacity to advance money and genuineness of transaction. The cash book submitted by assessee is rejected and addition under Section 68 of unexplained cash credit was made. The case book i.e. books of account was rejected without invoking Section 145 of the Act. For making addition under Section 68, maintenance of books of account is compulsory and any sum found to be credited and the name of creditors which remained outstanding is treated as cash credit. In case of assessee, there was no outstanding entries at the end of year. There was no loan provider or creditor but it was realisation of sales recorded in earlier year. The sale and debtors

were shown in the return of income. The realization of said parties are received in cash and cash remained as cash on hand at the year end which is on asset side of balance sheet. For rejection of books of account, there must be invocation of Section 145 of the Act. For invocation of Section 68, there must be existence of books of account hence action of Assessing Officer is not as per law. The assessee again submitted that he has made a sales of grey fabric of Rs. 1.63 crores in A.Y. 2015-16 from following four parties, out of which sales remained unrealized at the year-end;

1.	Sanjay Silk Mills	Shop No. 8, Maha Laxmi Market, Rina Road, Surat.	6,76,440/-
2.	Vitrang Creation	3634, Raghukul Market, Ring Road, Surat.	6,93,816/-
3.	Yagnika Silk Mills	3ra Street, Baxi ni Wadi, Opp. Kohinoor House, Surat	7,51,032/-
4.	Zapiya Fashions	Shop No. 11, Near Baxi ni Wadi, Opp Kohinoor Market, Surat.	7,72,945/-

During the course of transaction, the said parties were available at the respective location but during the course of scrutiny assessment, the assessee tried to contact at their address but were not available and on enquiry by the occupant, it was informed that the said parties were tenant and have left and new tenants are occupying the premises. The assessee further stated that the Assessing Officer started his investigation by referring that the assessee made cash deposit of Rs. 62.00 lacs during demonetization period and case was scrutinized to verify the cash on hand as on 31/03/2016. The Assessing Officer has

not made any enquiry about deposit in bank during demonetization period. The cash deposit during demonetization period was duly substantiated. Such notices were issued before framing of assessment order. The said notices were issued well in advance before framing of assessment order so issuance of notice in next year how can be considered in assessment or preceding years. The assessee reiterated that the Assessing Officer not asked about the cash deposit of Rs. 62.00 lacs so no details for such cash deposit was furnished. The assessee has made disclosure under IDS 2016 on 15/09/2016 declaring cash on hand of Rs. 50.00 lacs and the same has been source of cash deposit during demonetization period. Copy of TDS form was furnished. On the basis of aforesaid submission, the assessee requested to delete the addition under Section 68 of the Act of Rs. 24,91,375/-.

4. The Id. CIT(A) after considering the submission of assessee held that the assessee claimed that he has received cash from various parties, however, no documentary evidence was furnished before the Assessing Officer to prove the identity, creditworthiness of the parties and genuineness of transaction. The Assessing Officer issued notice under Section 133(6) of the Act to all the sundry creditors which was returned unserved. The assessee filed similar submission during appellate proceedings mainly as given before the Assessing Officer that he received cash from various persons which was not accepted by Id.

CIT(A). The Id. CIT(A) relied upon the decision of Hon'ble Punjab & Haryana High Court in Anil Goel Vs CIT (2008) 306 ITR 212 (P&H), in the said case, it was held that when the assessee was given ample opportunity to make submission by appearing in person or through authorised person, no one had put in appearance nor justifiable reason for adjournment was given. Thus, there was no justification and upheld the addition. Against the specific grounds of appeal about rejection of books of account without invoking Section 145, the Id. CIT(A) held that the assessee has not offered any explanation about the nature and source of the amount credited in the accounts, thus, books of account produced by the assessee were rejected. The Id. CIT(A) specifically recorded that he has seen that Section 145 was invoked as only Section 145 gives the authority to Assessing Officer to reject the books of account. Further aggrieved, the assessee has filed present appeal before this Tribunal.

5. I have heard the rival submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that during the assessment, the Assessing Officer proposed to reject the cash book and to make addition of Rs. 24,91,375/- as cash in hand on 31/03/2016 as unexplained cash credit. The Assessing Officer has not invoked Section 145 and Section 68 of the Act. In

response to show cause notice of Assessing Officer, the assessee filed reply on 04/10/2018. Though, the Assessing Officer made addition as proposed in the assessment order, however, books of account was not rejected and made addition under Section 68 of the Act. Thus, impliedly accepted the submission of assessee. The Id. AR of the assessee submits that books of assessee cannot be rejected when debtors could not be traced. The assessee made sales to the impugned debtors in A.Y. 2015-16 and the amount was reflected in sundry creditors in the audited balance sheet as on 31/03/2015 so the books of account of current year cannot be rejected when books of account of preceding year was duly audited and debtors of Rs. 28,94,233/- were appearing in the audited financial statement. The sales made during the earlier year were supported by bills and challans. In the course of assessment proceedings, the assessee filed sales register for financial year 2014-15, copies of bills and ledger accounts of the parties. The assessee also filed cash book of current year where sale proceeds were received from debtors and creditors. No defects were found by Assessing Officer. The auditors has not made any clarification in the audit report of F.Y. 2014-15. The Id. AR submits that the assessee has made declaration in IDS-2016 of Rs. 50.00 lacs for A.Y. 2015-16 and therefore, the defects, omission if any, is covered by declaration made by assessee. The reliance placed by Id. CIT(A) in Unit Construction Co. Ltd. Vs JCIT 260 ITR 189 (Cal.) is

misplaced. In the said case, it was held that it was not necessary to reject the books of account to make addition under Section 69 r.w.s. 69B. It was submitted that even without rejecting books of account, addition cannot be made. The Id. AR of the assessee submits that the Assessing Officer in the assessment order, referred the guidelines of CBDT issued on 24/11/2017. Such guidelines were issued as standard operating procedure (SOP) for verification of issues arising out of cash deposit due to demonetization where the return of income is revised or filed belatedly. In such guidelines, it was laid down that verification should be made where significant higher cash in hand is disclosed as on 31/03/2016 or on 31/03/2015 compared to preceding year in the belated return. The guidelines are in respect of cash deposits of high denomination notes falling in the assessment year 2017-18. The assessee has shown cash balance of Rs. 24,91,375/- as on 31/03/2016 and thus the case was taken for limited scrutiny independently. As the assessee has shown large cash and not because of cash deposited of Rs. 62.00 lacs during demonization period. No addition was made in A.Y. 2017-18 when the cash was deposited. Even protective addition was not made. The Assessing Officer made addition of alleged unexplained cash on hand appearing in the balance sheet as on 31/03/2016. The item is appearing on the asset side of the balance sheet and not liability side of the balance sheet and therefore no addition under Section 68 can be made.

Further no addition under Section 69A as unexplained money can also be made as the cash on hand is duly recorded in the books of account. The assessee made declaration under IDS-2016 and therefore, the defects if any in the books of account of preceding year when the sales was made, is covered. The Id. AR submits that during the assessment proceedings, the assessee relied on the decision of Kolkata Tribunal in Siddhartha Kandar Vs ITO in ITA No. 1422/Kol/2015 which was not accepted by Assessing Officer by taking view that the facts are different. In the said case, addition was made for unexplained debtors of Rs. 1,75,200/- which was deleted by the Tribunal by holding that the amount received from debtors at the end of year was duly accounted in the books of account of next year and addition of sundry debtors was held as not sustainable. To support his submission, the Id. AR of the assessee also relied upon the decision of Bangalore Tribunal in Anantpur Kalpana vs ITO ITA No. 541/Bang/2021, Sanand Textiles Industries Ltd. Vs DCIT ITA No. 995/Ahd/2014, decision of Hon'ble Rajasthan High Court in Smt. Harshila Chordia Vs ITO 298 ITR 349, Kolkata Tribunal in Shri Sanjeev Kejriwal Vs ITO ITS No. 371/Kol/2010, Hon'ble Supreme Court in CIT Vs Devi Prasad Vishwanath 72 ITR 194 (SC) and the decision of Delhi Tribunal in Racmann Springs (P) Ltd. Vs DCIT 52 TTJ 660. The Id. AR of the assessee further submits that when books of account was rejected, profit is required to be estimated on the credit made by way of cash in

the books. To support such submission, the Id. AR relied on the decision of Hon'ble Apex Court in the case of Brij Bhushan Lal Parduman Kumar Vs CIT 115 ITR 524 (SC) and decision of Ahmedabad Tribunal in Shree Sanand Textiles Industries Ltd. Vs DCIT ITA No. 995/Ahd/2014.

6. In alternative and without prejudice submission, the Id. AR of the assessee submits that if the receipts from the debtors are not accepted, the deduction should be given for trading loss as in case of such hypothesis amount of cash on hand added by Assessing Officer is not existent and therefore, deduction of trading loss/bad debts is required to be given against deemed income. So in effect, the action of Assessing Officer results into addition. In A.Y. 2016-17, the set off trading loss is allowable against the deemed income assessed under Section 115BBE of the Act as per Circular of CBDT No. 11 of 2019.
7. On the other, the Id. Sr.DR for the revenue supported the orders of lower authorities. The Id. Sr.DR for the revenue submits that the addition was made by Assessing Officer on account of unexplained credit. No source of credit was explained. The assessee took a plea of sundry creditors, the assessee failed to substantiate the plea of sundry creditors. No such creditor was found at the address given by assessee. The Assessing Officer has not rejected the books of account and simply made addition on account of unexplained credit.

8. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. The Assessing Officer made addition of Rs. 24,91,375/- by taking a view that the assessee has failed to satisfactorily explained source of credit in the books of account as required under Section 68 of the Act. I find that the Assessing Officer in his show cause notice, asked the assessee to explain the source of cash and genuineness of debtors. The Assessing Officer recorded that the assessee filed reply to the said show cause notice. However, contents of reply is not recorded by Assessing Officer. I find that in response to such show cause notice, the assessee filed detailed reply dated 04/10/2018, copy of which is placed on record at page No. 5 to 7 of paper book. In the reply, the assessee specifically pleaded that the debtors from whom the cash was received was part of audited balance sheet of A.Y. 2015-16. Sales were made in A.Y. 2015-16 on credit basis. Money were receivables as on 31/03/2015, income/profit on those sales which are standing in the balance sheet as sundry debtors already been offered for taxation in A.Y. 2015-16. Those sales which turn into sundry debtors as on 31/03/2015 and again turn into cash during subsequent year is added in the income, it will be taxed twice which is against the law. I find that the Assessing Officer has not referred the contents of reply and conveniently overlooked and simply rejected such contention. The Assessing Officer straightway proceeded to make the

addition under Section 68 by making reliance on the report of Inspector that parties are not available at the address provided by assessee. It is settled position that for making addition under Section 68, maintenance of books of account is compulsory and any sum found to be credited and the name of creditors which remained outstanding is treated as cash credit.

9. I find that the assessee right from the beginning has a clear stand that he made sales to the impugned debtors in A.Y. 2015-16 and the amount was reflected in sundry creditors in the audited balance sheet as on 31/03/2015 so the books of account of current year cannot be rejected when books of account of preceding year was duly audited and debtors of Rs. 28,94,233/- were appearing in the audited financial statement. Further, the sales made during the earlier year were supported by bills and challans. I find merit in the contention of Id AR for the assessee that in the course of assessment proceedings, the assessee filed sales register for financial year 2014-15, copies of bills and ledger accounts of the parties. The assessee also filed cash book of current year where sale proceeds were received from debtors and creditors. No defects were found by Assessing Officer in such cash book. The assessing officer made addition under section 68, which is not justifiable as the impugned amount was brought to tax twice, firstly on account of sales and secondly by treating it as unexplained. Similar view was taken by division bench

of Tribunal in Shree Sanand Textile Industries Limited Vs DCIT (supra) and SMS bench of Tribunal in Anantpur Kalpana Vs ITO (supra).

10. I also find merit in the alternative plea of the Id AR for the assessee that if the receipts from the debtors are not accepted as genuine, the deduction should be given for trading loss as in case of such hypothesis amount of cash on hand added by Assessing Officer is not existent and therefore, deduction of trading loss/bad debts is required to be given against deemed income. Thus, in view of the afforesaid factual and legal position, the grounds of appeal raised by the assessee are allowed.

11. In the result, this appeal of assessee is allowed.

Order announced in open court on 28th July, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/07/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat