

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JODHPUR
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No. 86/Jodh/2022

(A.Y: 2017-18)

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| Ram Deo Pan Bhandar KEM Road, Bikaner-334001, Rajasthan. | Vs. | ACIT, Circle -1, Bikaner, Rajasthan. |
| PAN/GIR No. : AABFR3308M | | |
| Appellant | .. | Respondent |

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| Assessee by : | Shri Amit Kothari, CA |
| Revenue by : | Ms. Prerana Choudhary, JCIT DR |

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| Date of Hearing | 16.08.2023 |
| Date of Pronouncement | 17.08.2023 |

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *The Id. CIT(A) has erred in sustaining the disallowance of 55,130/- Rs. 1,83,771/- on account of discount expenses.*

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2. *The Id. CIT(A) has erred in not accepting the contention of the appellant that the excess cash found during survey amounting to Rs. 4,65,346/- cannot be treated as unexplained income u/s 69A for tax purposes.*
3. *The ld. CIT(A) has erred in upholding the action of Id. AO in invoking section 115BBE on addition for cash made.*
4. *The appellant pray for suitable costs*
5. *The appellant crave liberty to add, amend, alter, modify or delete any of the ground of appeal on or before its hearing before your honour*

2. The brief of the case are that the assessee is a partnership firm and is engaged in the business of pan masala, beetle, Gutka and other FMCG items. The assessee has filed the return of income on 07.11.2017 of for the A.Y 2017-18 disclosing a total income of Rs. 1,15,25,270/-. There was survey u/s 133A of the Act was conducted on the assessee. Subsequently notice u/s 143(2) and 142(1) of the Act was issued calling for various details. In compliance to notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The AO has dealt on the facts with respect to survey u/s 133A of the Act on 27.12.2016 and the assessee has voluntarily surrendered income of Rs.1.05 Cr. However the AO on perusal of the books of accounts and on test check of the various expenditure found that the assessee has not maintained the proper vouchers/bills with respect to the

various claims of expenditure and has estimated the disallowance of expenditure @10% which works out to Rs. 66,734/-.The next disputed issue is with respect to surrendered income, the AO found that the assessee has surrendered voluntarily of Rs. 1.05 Cr in the survey proceedings due to difference in cash and difference in physical stock, and the assessee has made submissions referred at Para 6 of the assessment order. Whereas the AO has relied on the decision of Hon'ble High Court of Rajasthan and granted relief. Whereas in respect of Rs.4,65,000/- which was not recorded in the books of accounts, the AO has called for various details and the assessee has filed the explanations referred at 6.2 of the order and the AO has treated the excess cash as the unexplained money u/s 69A of the Act and applied the provisions of Sec. 115BBE of the Act. The third disputed issue that the assessee has claimed donation and charity expenses of Rs. 1,83,771/- in other expenses which is not an allowable expenditure as the same is not related to business and was disallowed. Finally the AO has assessed the total income of Rs. 1,17,75,780/- and passed the order u/s 143(3) of the Act dated 18.12.2019.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the

grounds of appeal, submissions of the assessee and findings of the AO and has granted partial relief and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts that the expenditure which was mentioned as donation/Charity expenses is actually discount expenditure and disclosed under wrong heading. The assessee has incurred the expenditure wholly and exclusively for the purpose of business. In respect of excess cash found in survey operations, the Ld. AR contended that the excess amount cannot be treated as unexplained income u/s 69A of the Act as this income was generated due to business transactions and the addition cannot be made without corroborative evidence. The Ld. AR substantiated the submissions with the paper book, the judicial decisions and prayed for allowing the appeal.

5. Contra, the Ld. DR submitted that there is no justification for treating as regular source of income of the assessee and relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The Ld. AR submitted that the CIT(A) has erred in sustaining the addition with respect to disallowance of expenditure of Rs.1,83,775/- which is in the nature of discount charges allowed to the customers. The Ld. AR submitted that though the head of expenditure which was claimed by the assessee is different but the assessee has provided the discount to various parties in respect of the sales and the Ld. AR demonstrated the ledger account of the discount expenses at page 1 to 61 of the paper book in respect of various discounts allowed to customers. We found these facts are not been verified/ examined by the AO. Hence to meet the ends of justice, restore the disallowance of discount expenses to the file of the Assessing officer for verification and we allow the ground of appeal for statistical purpose. The second disputed issue is with respect to addition of Rs. 4,65,346/- made by the AO as undisclosed income. The contentions of the Ld. AR that this is the business income of the assessee, generated in day to day operations from trading but was not included in the cash book and relied on the judicial decision and this should be taxed as a business income and not the application of tax rate U/sec115BBE of the Act. We find there is no clarity on

the disputed issue whether the excess cash was derived through business operations and the contentions of the Ld.AR cannot be accepted without evidences. Accordingly, considering the principles of natural justice shall provide with one more opportunity to the assessee before the lower authorities and remit this issue to the file of the assesseeing officer to examine the factual aspects and decide on merits. And we allow the ground of appeal for statistical purposes

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 17.08.2023.

Sd/-

(DR DIPAK P RIPOTE)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Jodhpur Dated 17.08.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Jodhpur
6. Guard file.