

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं

श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 245/KOL/2023
Assessment Year: 2017-18**

***Dhananjay Dutta.....Appellant
[PAN: ACRPD 4187 G]***

Vs.

ITO, Ward-3(1), Suri, Birbhum.....Respondent

Appearances by:

Sh. Dilip Chatterjee, Adv., appeared on behalf of the Assessee.

Sh. Sudip Kumar Bandyopadhyay, Addl. CIT, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 25th, 2023

Date of pronouncing the order : August 22nd, 2023

ORDER

Per Rajesh Kumar, Accountant Member:

This is an appeal preferred by the assessee against the order of Learned Commissioner of Income-tax (Appeals)- NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] dated 17.12.2022 for the Assessment Year (in short 'AY') 2017-18.

2. At the outset, we notice that there is a delay of 14 days in filing the appeal. The assessee has also filed condonation petition

stating that the assessee is located in very remote village of Kirnahar and is running a retail business of grocery. It was submitted in the affidavit that due to the remoteness of the place where the assessee is located and ill health of the Counsel, the appeal could not be filed in time. Having heard the rival contentions and the reasons stated before us, we are inclined to admit the appeal of the assessee for adjudication as the delay is for genuine reasons.

3. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of Rs. 18,63,973/- by Ld. CIT(A) thereby upholding the order of The Assessing Officer (in short ld. 'AO').

4. The facts in brief are that as per the information available from ITBA Portal system the assessee has deposited in UCO Bank, Kirnahar Branch Rs. 25,23,000/- during the demonetization period. The total cash deposits during the financial year in the said bank was amounting to Rs. 2,71,73,000/-. However, no return was filed for the said assessment year. Accordingly, an enquiry was conducted by Ld. AO by issuing notice u/s 142(1) of the Act but again no response was received from the assessee. Thereafter, notice u/s 142(1) of the Act was issued directing the assessee to file the return of income. However, again the assessee failed to comply with the said notice. Finally, Ld. AO proceeded to frame the assessment as per the provisions of Section 144(1)(b) of the Act which provides that where the assessee fails to comply with all the terms of a notice issued under sub-section (1) of section 142 of the Act, Ld. AO shall gather all relevant material and make assessment

of total income to the best of his judgment. Ld. AO issued notice u/s 133(6) of the Act to the Branch Manager, UCO Bank, Kirnahar Branch on 13.05.2019 and the Branch Manager complied with the notice by furnishing statements and other relevant documents to Ld. AO. Thereafter, a show cause notice was issued u/s 144(1)(b) of the Act dated 12.09.2019 & 23.09.2019 to the assessee calling upon the assessee to explain as to why the cash deposit of Rs. 2,71,76,000/- should not be treated as income and should not be added as income u/s 69A of the Act. The assessee responded to the said notice by filing written submissions dated 24.09.2019 furnishing the bank statement, cash book, profit and loss account, balance sheet, computation of income. In the profit and loss filed by the assessee, he calculated the profit during the year at Rs. 4,79,211/- but did not submit any return of income. Ld. AO observed on the basis of bank statement that assessee has deposited Rs. 2,82,73,000/- during the year in the said bank account whereas as per the trading account the total sales were of Rs. 2,64,09,027/- and treated the difference of Rs. 18,63,973/- between cash deposited of Rs. 2,82,73,000/- & sale disclosed in the profit and loss account of Rs. 2,64,09,027/- as income u/s 69A of the Act in the assessment framed u/s 144 of the Act dated 28.12.2019.

5. Ld. CIT(A) simply affirmed the order of Ld. AO when the assessee fails to respond to the notice issued on three occasions.

6. After hearing rival contention and perusing the material on record, we find that the addition has been made by Ld. AO to the tune of Rs. 18,63,973/- u/s 69A of the Act which was calculated

by reducing the sales disclosed by the assessee in the trading account of Rs. 2,64,09,027/- from the total cash deposits into the bank during the year of Rs. 2,82,73,000/-. According to Ld. AO since the cash deposits in the bank was more than the turnover of the assessee, the same is liable to be added u/s 69A of the Act. We have perused the summary statement of VAT returns from 01.04.2016 to 31.03.2017 and find that the total sales inclusive of VAT worked out to Rs. 2,81,68,457/-. For the ready reference, the said statement is extracted below:

B.M. ENTERPRISE +
Prop. - Dhananjoy Dutta
Vill + PO - Kirnagar, Dt. Birbhum, PIN- 731302, WB
WBVAT NO. - 19813215054

SUMMARY STATEMENT OF VAT RETURNS FOR 4QE 01.04.2016-31.03.2017

QUARTER	TAXABLE SALE @14.5%	VAT @14.5%	TAXABLE SALE @5%	VAT @5%	QUARTERLY TAX	TOTAL TAXABLE SALE	TOTAL VAT	TOTAL VALUE
1ST QUARTER	59,06,530.00	8,56,448.00	6,91,490.00	34,574.00	8,91,022.00	65,98,020.00	8,91,022.00	74,89,042.00
2ND QUARTER	49,41,889.00	7,16,574.00	-	-	7,16,574.00	49,41,889.00	7,16,574.00	56,58,463.00
3RD QUARTER	38,18,670.00	5,53,708.00	10,08,164.00	50,407.00	6,04,115.00	48,26,834.00	6,04,115.00	54,30,949.00
4TH QUARTER	78,98,940.00	11,45,346.00	5,19,730.00	25,987.00	11,71,333.00	84,18,670.00	11,71,333.00	95,90,003.00
1st + 2nd + 3rd + 4th Quarter Total	2,25,66,029.00	32,72,076.00	22,19,384.00	1,10,968.00	33,83,044.00	2,47,85,413.00	33,83,044.00	2,81,68,457.00

7. The assessee has filed before us the reconciliation of cash, a copy of which is filed at page no. 13 which is also extracted below for the ready reference:

B.M. ENTEPRISE
Prop : Dhananjoy Dutta

*Vill-Kimahar, Rail Gate, P.O. - Kimahar, P.S. Nanoor,
Dist-Birbhum, PIN-731302*

**RECONCILIATION OF SALES VIS-A-VIS CASH DEPOSITS FOR THE YEAR
2016-17 (A.Y.2017-18)**

<i>PARTICULARS</i>	<i>NET SALES</i>	<i>VAT</i>	<i>GROSS SALES</i>
<i>TAXABLE SALES</i>	<i>2,47,85,413.00</i>		<i>2,47,85,413.00</i>
		<i>33,83,044.00</i>	<i>33,83,044.00</i>
<i>ADD: VAT</i>	<i>16,23,614.00</i>		<i>2,81,68,457.00</i>
			<i>16,23,614.00</i>
<i>ADD: NON -TAXABLE SALES</i>	<i>2,64,09,027.00</i>	<i>33,83,044.00</i>	<i>2,97,92,071.00</i>

8. Thus, we find from the perusal of the balance sheet, profit and loss account, the reconciliation of cash and statement of VAT that the assessee had sufficient cash available and therefore, deposit of cash to the tune of Rs. 2,82,73,000/- which was inclusive of VAT stands fully explained and therefore we hold that the cash deposits were made out of gross sales. In other words, the total sales by the assessee during the year were Rs. 2,97,92,071/- as is apparent from reconciliation filed by the assessee. So, considering all these facts and circumstances of the case, we are inclined to set aside the order of Ld. CIT(A) and direct Ld. AO to delete the addition of Rs. 18,63,973/-.

9. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 22nd August, 2023.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rajesh Kumar]
Accountant Member

Dated: 22.08.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Dhananjoy Dutta, Rail Gate, Kirnahar, West Bengal-731 302.**
- 2. ITO, Ward-3(1), Suri, Birbhum.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata