

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1553/DEL/2021 [A.Y. 2017-18]

Jagdamba Optics Pvt. Ltd
107, Kandle Kashan, Fatehpuri
Delhi

Vs. The Dy .C.I.T.
Circle 13(1)
New Delhi

PAN: AAACJ 0693 H

(Applicant)

(Respondent)

Assessee By : Shri Ankit Agrawal, CA
Ms. Komal Goyal, CA

Department By : Shri Waseem Arshad, CIT-DR

Date of Hearing : 23.08.2023

Date of Pronouncement : 25.08.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 08.09.2021 by the National Faceless Appeal Centre pertaining to Assessment Year 2017-18.

2. The grievances of the assessee read as under:

"1. The Ld. CIT(A) has erred in law and on facts in confirming the assessment order passed by DCIT. Circle 13(1), New Delhi dated 22.12.2019 u/s 1433) of the Income-tax Act is bad both on the facts and in law and in the circumstances of the case. Therefore in all fairness the declared income on the basis of audited books of accounts should have been accepted in the interest of justice

2. The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs 39.92.742/- u/s 68 and rejecting the explanation offered by the assessee with respect to the nature and source of cash deposited in the bank account during the demonetization period and have acted merely on surmises conjuncture suspicious presumption and assumption."

3. The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs 39,92,742/- us 68 as the confirmation from the debtors from whom cash was received during whole of the year was not provided to him in one single day. The confirmations were subsequently received by the assessee.

4. The Ld. CIT(A) has erred in law and on facts in rejecting the submission of the assessee that only Rs.1 33,300 was received by the assessee from the debtors in October 2016, and only Rs 60,999 in November 2016 therefore the cash received from

debtors was not deposited during the demonetization period. Consequently the application of section 115BBE is bad in law and on the facts of the case.

5. The Ld. CIT(A) has erred in law and on facts in treating Rs 3992742/- the cash deposited during the demonetization period as unexplained cash credit u/s 68 of the Act although the nature and source of the cash deposit being proceeds arising out of the cash sales is patently evicted from the entries in the audited books of account of the assessee.

6. The Ld. CIT(A) had erred in law and on the facts in disallowing the Employee and Employer share of EPF/ESI amounting to Rs 234044/ which have been deposited after the due date prescribed under the respective law. But the assessee had deposited all the amount before the due date of filing of income tax return. Therefore no disallowance is called for under section 36/43 of the Income Tax Act. Further out of the disallowance of 234044/- the employee contribution is amounting to Rs.109,698/- and employer contribution is Rs. 1,24,346/-.

7. That the Appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal

8 That the impugned appellate order is arbitrary illegal bad in law and in violation of rudimentary principles of contemporary jurisprudence."

3. Ground No. 1 is general in nature and needs no adjudication.
4. Ground Nos. 2 to 5 relate to the addition on account of cash deposited during demonetization period.
5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.
6. Briefly stated, the facts of the case are that the appellant company is a 100% importer wherein it purchases spectacle lenses from China and sells the same from a shop situated at Fatehpuri, Chandni Chowk, New Delhi and a shop-cum-godown at Noida. The nature of the business of the assessee is such that it has wholesale as well as retail sale. The retail sales are generally over the counter sales to various customers like small shop keepers, sales representatives etc. Customers usually pay in cash and as such, the assessee normally has sufficient cash balance throughout the year. The cash received against such cash sales is subsequently deposited into the bank account of the assessee from time to time as per the convenience of the assessee.

7. Return for the year under consideration was e-filed on 24.10.2017 declaring an income of Rs. 1,20,98,296/-. Return was selected for scrutiny assessment under CASS and accordingly, statutory notices were issued and served upon the assessee.

8. One of the reasons for taking the return for scrutiny selection was abnormal increase in cash deposits during demonetization period as compared to pre-demonetization period. On this erroneous fact, the Assessing Officer proceeded in examining the cash deposited during the demonetization period vis-à-vis during the same period in the immediately preceding year and formed a belief that the ratio laid down by the Hon'ble Supreme Court in the case of Sumati Dayal 214 ITR 801 squarely apply on the facts of the case and disbelieving the explanation of the assessee, the Assessing Officer concluded that the explanation given by the assessee regarding cash deposit of Rs. 39,92,742/- after announcement of demonetization is not satisfactorily explained and hence made the addition of Rs. 39,92,742/-.

9. The assessee carried the matter before the Id. CIT(A) but without any success.

10. Before us, the ld. counsel for the assessee explained the deposit of cash by vehemently arguing that the same has been generated out of cash sales made during the year and the Assessing Officer has accepted the sales. Therefore, there is no reason why the cash deposits should not be accepted.

11. In so far as the allegation that there was a substantial increase in cash transactions during the demonetization period as compared to the same period in the previous year, the ld. counsel for the assessee stated that the entire allegation is factually incorrect.

12. It would be pertinent to understand the summary of comparative details for 3 F.Ys which is as under:

a. Chart showing comparison of Total sales, cash sales and cash deposited

Particulars	FY 2014-15	FY 2015-16	FY2016-17^v
Total Sales (A)	13,68,66,560	15,74,38,737	15,08,94,523
Cash Sales (B)	*	9,88,14,610	5,93,99,473
Cash Deposit (C)	5,77,68,485	9,55,72,219	5,51,89,614
% of Cash Sales of Total Sales (B)/(A)	*	62.76%	39.36%
:%: Cash Deposit of Total Sales (C)/(A)	42.21%	60.70%	36.57%

*

b. Chart showing comparison of average total sales, average cash sales and average cash deposit

Particulars (Monthly)	FY 2015-16	FY 2016-17
Average Total Sales (A)	1,31,19,894	1,25,74,543
Average Cash Sales (B)	82,34,550	49,49,956
Average Cash Deposit (C)	79,64,351	45,99,134

c. Chart showing comparison of Cash Sales

Particulars	FY 2015-16	FY 2016-17	% increase! (decrease)
Total Cash Sales	9,88,14,610	5,93,99,473	(39.89%)
Cash Sales between 1 st April to 8th November	6,26,89,100	4,56,32,006	(27.21 %)
Cash Sales between 9th November to 31 ⁵¹ December	1,47,65,865	42,56,077	(71.18%)
Cash Sales between 1 ⁵¹ January to 31 st March	2,13,59,645	95,11,390	(55.47%)

d. Chart showing comparison of Cash Deposit.

Particulars	FY 2015-16	FY 2016-17	% increase! (decrease)
Total Cash Sales	9,88,14,610	5,93,99,473	(39.89%)
Cash Sales between 1 st April to 8th November	6,26,89,100	4,56,32,006	(27.21 %)
Cash Sales between 9th November to 31 ⁵¹ December	1,47,65,865	42,56,077	(71.18%)
Cash Sales between 1 ⁵¹ January to 31 st March	2,13,59,645	95,11,390	(55.47%)

13. A perusal of the above shows that cash sales during F.Y. 2016-17 is lesser than the total sales in F.Y. 2015-16. Further, cash deposited during F.Y. 2016-17 is lesser than the cash deposited in F.Y. 2015-16. Most importantly, the average cash sales for F.Y. 2016-17 is higher than the Specified Bank Notes deposited during demonetization period when the average monthly cash sales for F.Y. 2016-17 is much lesser as average monthly cash sales for F.Y. 2015-16.

14. In fact, cash sales during the period 01.04.2016 to 09.11.2016 is 27.21% lesser than the cash sales during the same period in the preceding year and cash deposited during the demonetization period i.e. 09.11.2016 to 31.12.2016 is 36.38%, lesser than the cash deposited during the same period in the preceding year.

15. These factual details are coming out of the books of account of the assessee which go on to demonstrate that the allegation of the Revenue that there was excessive cash deposit during the demonetization period is not only fallacious but also against the facts of the case in hand.

16. Considering the facts of the case in totality, as discussed hereinabove, we are of the considered opinion that the cash sales and corresponding cash deposits have been a regular feature of the business of the assessee and there is certainly no abnormal trend of cash sales and cash deposit during the relevant previous year. Therefore, we do not find any merit in doubting the genuineness of the cash deposits qua the cash sales. We, accordingly, set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the addition of Rs. 39,92,742/-. Ground Nos. 2 to 5 taken together are allowed.

17. Ground No. 6 relates to the addition on account of delay in deposit of employee's contribution and employer's share of EPF/ESI which has been deposited after the due date prescribed under respective law but before filing of return of income.

18. In so far as delay in depositing the employee contribution is concerned, the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd 448 ITR 518 has settled the dispute in favour of the Revenue and against the assessee. Therefore, respectfully following

the same, disallowance on account of delay in deposit of employee share of EPF/ESI is sustained.

19. In so far as delay in depositing the employer's contribution is concerned, we direct the Assessing Officer to verify the date of deposit and, if the same has been deposited before filing the return of income, no addition should be made as per the relevant provisions of law. Ground No. 6 is allowed in part for statistical purposes.

20. In the result, the appeal of the assessee in ITA No. 1533/DEL/2021 is partly allowed for statistical purposes.

The order is pronounced in the open court on 25.08.2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th August, 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	