

**IN THE INCOME TAX APPELLATE TRIBUNAL “(SMC)” BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.248/Kol/2023  
Assessment Year: 2017-18**

Prasun Dutta Prop. of M/s. Dutta Traders Rashtala, Dist. & PO Bankura, Pin-722101 (PAN: AJXPD1805E)	Vs.	Income-tax Officer, Ward-3(1), At+POKenduadihi, Dist. Bankura, Pin-722102.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri S. M. Surana, Advocate

Respondent by : Shri Sailendra Kumar Pandey, Addl. CIT, Sr.DR

Date of Hearing : 15.06.2023

Date of Pronouncement : 28.08.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2022-23/1050833175(1) dated 16.03.2023 passed against the assessment order by ITO, Ward-3(1), Bankura u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.11.2019, for AY 2017-18.

2. Assessee has raised the following grounds of appeal:

*“1. For that the order of the Ld. CIT(A), NFAC, passed u/s. 250 of the I. T. Act, 1961 thereby confirming the order of the Ld. AO passed u/s. 143(3) is arbitrary, irregular, illegal and absolutely contrary to the principles of natural justice.*

2. For that the Ld. CIT(A), NFAC, in consideration of facts and circumstances of the matter, is not justified to confirm the addition of Rs.2,45,241.00 made by the Ld. AO as unexplained money.

3. For that the Ld. CIT(A), NFAC, erred in consideration of facts and circumstances of the matter, in confirming total deposits of Rs.2,14,47,884.00 made in the cash credit account as turnover of the business of the appellant.

4. For that the Ld. CIT(A), NFAC, erred in consideration of facts and circumstances of the matter, in confirming application of sec. 69A r.w. Sec. 115BBE which is post facto amendment applicable to AY 2018-19 onwards.

5. For that the Ld. CIT(A), NFAC, erred in consideration of facts and circumstances of the matter, in confirmation of application of Sec. 69A r.w. Sec. 115BBE being post facto amendment.”

3. On perusal of ground no.3, we note that reference is to addition of total deposits of Rs.2,14,47,884/-. However, on perusal of the assessment order and the order of Ld. CIT(A), there is no such addition of this amount as alleged by the assessee. Addition made by the Ld. AO in this respect is of Rs.31,06,827/- which we will consider while adjudicating on the matter.

4. Brief facts of the case are that assessee filed his return of income on 08.12.2017 reporting a total income of Rs.3,60,150/-. Case of the assessee was selected for scrutiny assessment through CASS under limited category for the reason of “*large value cash deposited during demonetisation period as compared to returned income*”. Ld. AO had called for bank statement from IBDI Bank, Oriental Bank of Commerce and Axis Bank for verification of bank transactions made by the assessee by issuing notice u/s. 133(6) of the Act. From the replies provided by these banks, Ld. AO observed that in the case of IDBI Bank, assessee had three accounts with its Bankura Branch. The three accounts were:

- (i) Cash Credit Account bearing No. 0713651100000152,
- (ii) Current Account bearing No. 0713102000002738 and
- (iii) Savings Account bearing No. 0713104000149174.

4.1. Ld. AO found that total deposits in the Cash Credit Account during the year under consideration was Rs.2,14,47,884/- whereas turnover of the assessee as reported in its audited P&L account is Rs.1,83,41,057/-. Further, he observed that other two bank accounts, namely the current account and the savings account were not disclosed in the return filed by the assessee, having closing balance of Rs.2,41,498/- and Rs.3,743/-, respectively.

4.2. According to the Ld. AO, there was an excess deposit of cash amounting to Rs.31,06,827/- in the cash credit account. He called for explanation in respect of above observations. Since nothing came up from the assessee in the course of assessment, Ld. AO completed the assessment by making the addition of Rs.31,06,827/- u/s. 69A of the Act towards excess deposit of cash in the cash credit account. He also made an addition of Rs.2,45,241/- (Rs.2,41,498/- + Rs.3,743/-) u/s. 69 of the Act in respect of two other bank accounts which were not disclosed by the assessee in his return. Aggrieved, assessee went in appeal before the Ld. CIT(A).

5. Before the Ld. CIT(A), assessee attempted to reconcile the difference between the total deposit in the cash credit account and the turnover reported in the audited P&L account by putting forth explanations, linking the same with VAT charges on his sales and purchases made during the year as well as with certain other payments towards life insurance premium, general insurance premium, interest and other charges paid to bank. However, to corroborate the same, nothing was brought on record in respect of VAT charges as no returns were filed and the VAT registration was cancelled.

5.1. In respect of the other two bank accounts i.e. current and savings account, it was submitted that though the accounts were not disclosed but the funds of Rs.2,50,000/- were transferred from the cash credit account to the current account. According to the assessee, closing balance of Rs.2,41,498/- which has been added is nothing but the amount transferred from the cash credit account. Nature and source of this balance which has been added is duly explained and, therefore, ought to be deleted. Ld. CIT(A) after considering the submissions made by the assessee, confirmed the additions and dismissed the appeal. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee has placed on record a written note of one page along with the paper book containing 40 pages. In the written note, it is submitted that both, purchases and sales were understated in the audited P&L account filed along with the return. The understatement is vis-à-vis deposits and payments made into and from the cash credit account with the IDBI Bank. Ld. Counsel referred to page 28 of the paper book containing audited Trading and P&L account for the year under consideration wherein sales reported is of Rs.1,83,41,057/-. Against this, total deposit in the cash credit account is Rs.2,12,97,484/- on account of sale, for which a statement is placed at pages 1 and 2 of the paper book. Total deposits in fact, are Rs.2,14,47,884/- which includes one entry and its reversal, amounting to Rs.1,50,000/-. Thus, after excluding this amount of Rs.1,50,000/-, deposit out of sale pointed out by Ld. Counsel is Rs.2,12,97,484/-. Accordingly, there is a difference of Rs.29,56,327/- which is excess cash deposit out of sale and not reported in the audited P&L account. Ld. Counsel has admitted that sales shown in the audited P&L account are at a lesser amount by a

sum of Rs.29,56,327/-. It is important to note that the amounts of deposit out of sale in the bank account and the amount of sale reported in the audited P&L account are not in dispute on standalone basis.

6.1. To make out the case, Ld. Counsel submitted that assessee has made purchases of Rs.2,10,38,203/- and payment of the entire purchases were made from the disclosed bank account, details of which are placed at pages 3 and 4 of the paper book. On page 3, details of payment from the IDBI Bank account are in respect of payments made for purchases from Nirma Ltd., amounting to Rs.1,73,33,203/-. On page 4, details are in respect of payment made to Inbisco Ltd., for purchase made from it of Rs.37,05,000/-, totalling to Rs.2,10,38,203/-. Against these payments for purchases, audited P&L account contains a sum of Rs.1,81,64,117/- towards purchases. Ld. Counsel submitted that the entire sale of assessee is in cash since assessee is in the business of wholesale trade of detergents. Ld. Counsel claimed that source of payment for excess purchases were out of excess cash deposits, realised on account of sale. He thus, claimed a netting of the two excesses, one in respect of sales and the other in respect of purchases i.e. Rs.29,56,327/- and Rs.28,74,086/-, so as to bring it to tax by treating the same as gross profit, amounting to Rs.81,341/-, on undeclared sales and purchases.

6.2. In respect of addition of Rs.2,41,298/-, Ld. Counsel reiterated the submission made as stated above that it is out of transaction of Rs.2,50,000/-, transferred from cash credit account to the current account and, therefore, no addition to be made in this respect.

7. Per contra, Ld. Sr. DR vehemently contested that books of accounts of the assessee do not show true and correct picture of the business transaction executed by it during the year. Assessee himself has accepted that the sales and purchases in the P&L account are understated though the books of accounts have been claimed to be subjected to audit u/s. 44AB of the Act for which tax audit report in Form 3CB and 3CD were furnished. It is a case where both, assessee and the tax auditor have come together to camouflage its business transactions by under reporting to defraud the exchequer. When the case got selected for scrutiny assessment and on realisation that things will surface out, nothing was furnished in the course of assessment before the Ld. AO.

7.1. According to him, before the Ld. CIT(A), explanations furnished are in terms of reconciling the differences by way of VAT charges of sales and purchases without furnishing any corroborative documentary evidences. Now, before the Tribunal, the case has been made out in justifying the understatement of sales and purchases by seeking a benefit of the wrong doing, to allow the claim by restricting the addition to the difference of two amounts i.e. the difference between the undeclared sales and the undeclared purchases to be brought to tax instead of addition of excess deposit made by the Ld. AO.

8. Having heard the rival contentions, we perused the tax audit report furnished by the assessee and placed in the paper book from pages 17 to 26, to understand the professional approach and audit assurance executed by the tax auditor. In Form 3CB for AY 2017-18, in clause 5, tax auditor has expressed his opinion about the true and correct particulars given in Form 3CD subject to certain

observations/qualifications. We refer to observation/qualification placed at Sl. No. 4 on "*proper stock records are not maintained by the assessee.*" On this, tax auditor has stated that "*due to nature and complexity of business of the assessee, it is not possible to provide quantitative details*". In this reference, we refer to clause 10(a) of Form 3CD which provides for reporting of nature of business or profession for which the tax auditor has mentioned it as "*trading and wholesalers*". Also, we refer to clause 35(a) wherein the tax auditor is required to give quantitative details of principal items of goods traded in case of a trading concern. The details required in tabulated form are item name, unit, opening stock, purchases during the previous year, sales during the previous year, closing stock and shortage/excess, if any. In this clause, tax auditor has reported it as "*NIL*".

8.1. Assessee has also submitted tax audit report for the immediately preceding year i.e. for AY 2016-17, placed at pages 29 to 37 of the paper book. On referring to same clause 5 in Form 3CB, against the same qualification type on "*proper stock records are not maintained by the assessee*", observation/qualification stated by the tax auditor is "*due to non-availability of proper stock records, we are unable to furnish quantitative details of the items traded*".

8.2. From the above factual observations, following inferences are drawn:

- (i) Assessee is in the business of wholesale trading;
- (ii) Purchases have been claimed to be made only from two suppliers i.e. Nirma Ltd. and Inbisco Ltd. which is evident from details of payments made against purchases, as already stated above;

- (iii) It is not a case of retail trade where frequency and volume of transaction is significantly high;
- (iv) There is nothing on record which demonstrates complexity of business in which the assessee is engaged in which prevents him to maintain quantitative details, more particularly when it is a wholesale trade, purchases limited to only from two suppliers. Observation/qualification stated by the tax auditor on the stock records maintenance are two different versions in the two consecutive years wherein, in one year, there is no availability of proper stock records and in the impugned year, it is because of the nature and complexity of business due to which quantitative details cannot be provided.
- (v) Further, when the difference between the deposit made in the bank account and sales reported in the audited P&L account is undisputed and uncontroverted, it is difficult to understand how can the excess deposit be reconciled while drawing the balance sheet which has been subjected to tax audit. Similar is our observation in respect of excess payment made against under-reported purchases which also is an undisputed and uncontroverted fact.
- (vi) There is nothing brought on record before us by the ld. Counsel to corroboratively establish that deposits of cash in the undisclosed bank account are sales receipt.

8.3. In the light of these above facts and documentary evidences as well as written note placed on record by the Ld. Counsel for the

assessee, we do not find any reason to interfere with the addition made by the Ld. AO, except to the extent of Rs.1,50,000/- which relates to transaction of reversal entry in the cash credit account. Accordingly, addition made by the Ld. AO in this respect is sustained for an amount of Rs.29,56,327/-.

8.4. Further, for the addition made in respect of closing balance of Rs.2,41,298/- in the current account with IDBI Bank, Ld. Counsel has evidently demonstrated from the bank statements that this closing balance is the result of transaction of Rs.2,50,000/- from the cash credit account. Accordingly, we deem it proper to delete the addition of this amount made by the Ld. AO. Addition made by the Ld. AO of Rs.3,743/- for closing balance in the savings account is sustained in absence of any explanation and submission. Even though we have deleted the addition of Rs.2,41,298/- since its nature and source is explained, we are unable to appreciate its accounting treatment. Cash Credit account is a duly disclosed bank account from where the funds of Rs.2,50,000/- have been transferred to the undisclosed Current account. A contra entry is passed in the books of account to record such a fund transfer from one bank account to the other bank account which ought to have been noticed by the tax auditor.

9. Before parting, we put on record our dissatisfaction on the conduct and reporting by the tax auditor in expressing his opinion on the true and correct particulars furnished in Form 3CD and signing the Balance Sheet and P&L account. It is the duty of the tax auditor to exercise due diligence and be cautious in preparing and signing the report and financial statements by undertaking prior careful examination and verification of records. Several stakeholders including government, regulators and private organizations rely on the

report/certificate by Chartered Accountant and once a particular factual aspect or entries, etc. are prepared, signed and certified by Chartered Accountant, they are ordinarily accepted without further probing or investigation. In such circumstances, the duty and obligation of being absolutely diligent, conscious and careful is multiplied manifold and a Chartered Accountant should not, and cannot take, such obligation of perform the duties lightly or casually. It has to be, and should be, dealt with seriousness, which it deserves.

10. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 28<sup>th</sup> August, 2023

Sd/-

(Sanjay Garg)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

***Dated: 28<sup>th</sup> August, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata