

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L. SAINI, AM

आयकर अपील सं./ITA No.36/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2017-18)

(Physical Court Hearing)

Income Tax Officer, Ward-3(2)(6), Surat, Room No.109, 1 st Floor, Anvil Building, Income Tax Officer, Surat-395009	Vs.	Rajal Rajendrabhai Patel Shop No.3, Labhunagar, Aai Mata Road, Magob Dumbal, Surat-394101
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No.: AWMPP 3195 K		
(अपीलार्थी /Assessee)		(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से /Assessee by : Shri Sapnesh R. Sheth, C.A

राजस्व की ओर से /Respondent by : Shri Ashok B. Koli, CIT-DR

सुनवाईकीतारीख/ **Date of Hearing** : **09/08/2023**

घोषणाकीतारीख/**Date of Pronouncement** : **26/09/2023**

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to assessment year 2017-18, is directed against the order passed by the National Faceless Appeal Centre, Delhi [‘NFAC/Ld.CIT(A)’ for short] dated 22.11.2022, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’), dated 28.12.2019.

2. The grounds of appeal raised by the Revenue are as follows:-

“i. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.4,81,13,300/-, made by the AO u/s 69A of the I T Act on account of unexplained money as the assessee has failed to furnish documentary evidences to explain source of total credits of Rs.4,81,13,300/- including cash deposits of Rs.4,79,03,000/- in his bank account maintained with HDFC Bank during assessment proceedings.

ii. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in relying on the claim of assessee without appreciating the fact that the assessee has neither produced details of cash sale parties i.e. name, address of parties nor submitted any bill/vouchers of the cash sales during the assessment proceedings.

iii. On the facts and circumstances of the case and in law, the ld. CIT(A) has not appreciated the fact that notices u/s 133(6) of the I.T. Act were issued to Sangamner Taluka Sahkari Dudh Utpadak & Prakriya Sangh Ltd., Sanganer in respect of claim of assessee of purchase from said party and the assessee's claim remained unverified as no reply/confirmation were received from the said party.

iv. On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

v. It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

vi. The assessee craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

3. Brief facts of the issue in dispute are stated as under. The assessee before is an Individual and engaged in the business of dairy products such as milk, paneer, curd and other milk products. The assessee filed return of income for assessment year (A.Y.) 2017-18 on 31.10.2017, declaring total income at Rs.5,26,150/-. The case of assessee was selected for scrutiny. Thereafter notices u/s 142(1) of the Act were issued to the assessee on 05.09.2019 and on 07.12.2019 asking the assessee to furnish certain details. In response, the assessee has furnished his submissions on various dates in ITBA portal.

4. During the assessment proceedings, the assessing officer observed that assessee has made cash deposits of Rs.4,79,03,000/- and total credits of Rs.4,81,13,300/- in his bank account maintained with HDFC Bank Ltd. The assessee has also deposited amount during the demonetization period i.e. 09.11.2016 to 30.12.2016 in his various bank accounts. Therefore, apart from the notices already issued, a show cause notice was issued on 23.12.2019, affording assessee another opportunity to attend the case and provide his version and justification as to why proposed additions should not be made to his total income for the AY 2017-18. The relevant portion is reproduced as under:

“2. On verification of the record, it is noted that despite of issuance of the above mentioned notices, you have not submitted proper documentary evidences/details to decide your case which was selected for scrutiny. You have not submitted evidences of cash sale. On verification of the records, following issues have emerged in your case:

As per the financial transaction details available on record, the assessee had made following cash deposit/amount credit during the FY 2016-17

Sr.No.	Name of the Bank	Bank a/c no.	Cash deposited/amount credited (in Rs) during the F.Y 16-17
1	HDFC Bank Ltd	05558630000140	4,79,03,000/-

3. Due to your failure to submit proper documentary evidences/details regarding source of cash deposits/credit entries, the cash deposit/credit entries of this bank account have remained unexplained. Hence are liable to be treated as unexplained credit.

4. In the circumstances, you are show caused to explain why your case should not be decided as per the provisions of Section 144 of the Act and why the following amounts should not be added to your total income for A.Y 2017-18.

1. Amount of cash deposits of Rs.4,79,03,000/- and other credit entries during the F.Y 2016-17 after treating it as unexplained income as per the provisions of the Act due to your failure to explain the source.

2. any other credit entry appearing in your any bank a/c which is found unexplained from the record.

3. penalty shall be levied as per the merit of the case.”

5. In response to the show cause notice, the assessee has submitted his reply, vide his letter dated 26.12.2019. However, assessing officer has rejected the contention of the assessee and held that assessee was requested to submit details of all cash sales i.e. name and address, invoice/bills of the parties from whom cash sales made during the years. However, assessee has failed to submit the above details of cash sales. The assessee has neither produced details of cash sale parties i.e. name, address of parties nor submitted any bill/vouchers of the cash sales during the assessment proceedings, therefore total credit entries of Rs.4,81,13,300/- made in his various bank accounts during the year under consideration was treated as unexplained money of the assessee, u/s 69A of the Act.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld. CIT(A) who has deleted the addition made by Assessing Officer. While deleting the addition, ld CIT(A) observed that since assessee is engaged in milk business wherein cash transaction are involved and therefore assessee has deposited the sale proceeds in the bank account and thereafter issued the cheques to various parties against purchases of milk. Aggrieved by the order of NFAC/Ld. CIT(A) the Revenue is in appeal before us.

7. Shri Sapnesh R. Sheth, Learned Counsel for the assessee begins by pointing out that assessee is engaged in the business of sale of milk and dairy products. The AO has made addition of Rs.4,81,13,300/- mainly for want of confirmation from M/s Sanganner Taluka Sahkari Dudh Utapadak Prakriya Sangh Ltd, as notice u/s 133(6) of the Act issued by the AO remained uncompiled with. The ld Counsel pleaded that AO has made additions without finding any mistake in the books of account of the assessee. When the assessee had regular cash sales and deposit of cash in bank accounts and if nothing incriminating is found contrary then addition u/s 68 of such cash sale would tantamount to double taxation, as the assessee has offered entire cash sales for taxation. This way ld Counsel defended the order passed by ld CIT(A).

8. On the other hand, Ld. CIT-DR for the Revenue, pleaded that the purchases and cash sales for the A.Y. 2017-18 had not been verified by the assessing officer, as the assessee has failed to submit relevant documents and evidences during the assessment proceedings. It is a fact that the assessee had made credit entries of Rs.4,81,13,300/- in his bank accounts during the year under consideration. However, he had failed to prove the source of the said cash deposits/credits entries in his bank accounts. It is the duty of the assessee and the onus cast upon the assessee to substantiate his

claim in respect of deposits/credits in his bank account during the year under consideration. Therefore, after due deliberations, total credit entries of Rs.4,81,13,300/-made in his bank accounts during the year under consideration was treated by the assessing officer as unexplained money and rightly added to the total income. Therefore, order of the assessing officer may be upheld.

9. We have heard both the parties and perused the materials available on record. We note that during the assessment proceedings the assessee submitted following documents and evidences: (i) Audited P&L a/c for A.Y 2017-18 along with extract of Form 3CB pertaining to stock details (paper book pages 11-12), (ii) Purchase ledger of Sangamner Taluka Sahakari Dudh Utpadan & Prakiya Sangh Ltd. (vide paper book pages 22-45), (iii) Bank statement showing the payment made to Sangamner Taluka Sahakari Dudh Utpadan & Prakiya Sangh Ltd (vide paper book page no. 46), (iv) Samples of purchase bills of Sangamner Taluka Sahakari Dudh Utpadan & Prakiya Sangh Ltd (vide paper book pages 47-48), and (v) Comparison of cash sales & deposits in F.Y 2015-16 and 2016-17 (vide paper book pages 49-50).

10. Considering these facts, and after going through the Comparison of cash sales and deposits in financial year (F.Y.) 2015-16 and 2016-17, we note that assessee has deposited cash out of his business receipts and the cash so deposited by assessee is not disproportionate, as compared to total turnover shown by assessee in the assessment year under consideration and in the previous assessment years. We also note that assessee's business is to purchase and sale of milk products, like paneer, curd, and milk etc., and these items are normally traded in cash only. Therefore, it is the nature of assessee's business that heavy cash transactions are involved. The cash so received by the assessee has been deposited in his bank account, and due

taxes have been paid thereon, therefore genuineness of the transactions should not be doubted.

11. During the appellate proceedings, the assessee has placed reliance on following case law:

(i) ***Shree Sanand Textiles Industries Ltd. vs. DCIT vide ITA No.1166/AHD/2014***, where in Hon'ble court has held—we also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of account as income at the time of sale only.

(ii) ***CIT v. Vishal Exports Overseas Limited (Gujarat High Court) Tax Appeal No.2471 of 2009***, Revenue carried the matter in appeal before the Tribunal. The Tribunal did not address the question of correctness of the CIT (Appeals) conclusion that amount of Rs.70 lakhs represented the genuine export sale of the assessee. The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realization and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.

(iii) ***ITO vs. Surana Traders (2005) 93 TTJ 875: (2005) 92 ITD 212*** Hon'ble Mumbai ITAT held that –“So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalized. In the sales documents, the assessee has made available all necessary details, i.e., the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete

books of account along with day-to-day and kilogram to kilogram stock register. These were produced by the assessee before the AO. The assessee also submitted stock tally sheet along with the audited accounts the audit report of the assessee also bears ample testimony in favour of the assessee. The factum of these having maintained stock register and quantitative details have been mentioned by the AO in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee – since the purchases have been held to be genuine, the corresponding sales cannot by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for.”

(iv) Delhi High Court in *CIT vs. Kailash Jewellery House ITA No.613/2010* decided on 09.04.2010 in the facts of above case, cash of Rs.24,58,400/- was deposited in bank account. The assessing officer made the addition on the ground that nexus of such deposit was not established with any source of income. The assessee claimed that it was duly recorded in the books of account of cash sales and was considered in the Profit and Loss account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book were submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that it is not in dispute that sum of Rs.24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the

same. The Hon`ble High Court dismissed the appeal filed by the Department.

12. Based on the above factual position, the Id CIT(A) observed that the AO was not justified in making the said addition merely for want of confirmation from a party without finding any defects in the books of account of the assessee, therefore, Id CIT(A) deleted the addition. We have gone through the findings of Id CIT(A) and noted that conclusion reached by Id CIT(A) is correct. On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A). Hence, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

13. In the result, the appeal of the Revenue is dismissed.

Order is pronounced on 26/09/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 26/09/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat