

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.67/Kol/2023
Assessment year: 2017-18

M/s Mohan Motor Business Pvt. Ltd.....Appellant
55, Chowringhee Road,
Kolkata-700071.
[PAN: AACCA6163F]

vs.

DCIT, Circle-11(1), Kolkata.....Respondent

Appearances by:

Shri Sunil Surana, AR, appeared on behalf of the appellant.

Shri Umakanta Dhrupati, DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 19, 2023

Date of pronouncing the order : October 18, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 10.01.2023 of the National Faceless Appeal Centre [(hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld CIT(A) erred in rejecting the ground of appeal of violation of principles of natural justice by the AO by ignoring the submissions of the assessee and passing the order.

2. For that the Ld CIT(A) erred in confirming the addition of cash deposits during demonetization on ground of non-production of any documentary evidences when the cash balance as on 08.11.2016 was duly proved with

reference to the audited books of accounts which was sufficient to cover the cash deposits which was supported by audited balance sheet.

3 For that the Ld CIT(A) erred in rejecting the explanation filed by the assessee ignoring the nature and volume of business as automobile dealer, the turnover was more than Rs 210 crores, the sales of the motors cars/two wheelers were covered under VAT, the VAT return was filed and VAT authorities duly accepted the sales where the name and address of the parties was also available, each and every vehicle sold was registered with Motor Vehicle authorities, hence there was no justification to doubt the sales on imaginary grounds.

4. For that the addition made in the disclosed bank account duly reported by the auditor in the TAR was not called for as a matter of routine in all cases simply because the deposit was made during demonetization period.

5. For that the Ld CIT(A) erred in confirming the action of the AO in taxing the assessee by applying section 115BBE of the IT Act 1961 which was not applicable.

6. For that the addition and application of sec 115BBE was not in accordance with law and is liable to be deleted.

7. For that the Ld CIT(A) should have given due weight to the fact that non-compliance on some dates was for sufficient reasons but in any case the books of accounts were duly produced which has not been rejected by the AO and hence the addition was not called for.”

3. A perusal of the above grounds of appeal would reveal that the assessee is aggrieved by the action of the lower authorities in making the addition on account of cash deposits during the demonetization period treating the same as unaccounted income of the assessee.

4. The brief facts of the case are that the Assessing Officer noticed that the assessee had deposited a total amount of Rs.4,25,80,516/- during the demonetization period. However, since the assessee did not respond to the notice issued by the Assessing Officer, therefore, the Assessing Officer treated the entire cash deposits as unexplained cash credits and added the same in the income of the assessee.

5. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

6. At the outset, the ld. Counsel for the assessee has submitted that during the crucial period, there was no business functions in the premises of the assessee company and that the notices issued by the Assessing Officer through email were not attended to. That notices uploaded by the Assessing Officer in Income Tax site was opened only on 20.11.2019. Further that one of the two directors of the company, Smt. Anju Bajaj was suffering from cancer and other director Shri Pradip Bajaj, husband of Smt. Anju Bajaj, was looking after her and was not in a position to attend his office or the assessment proceedings. The ld. Counsel, in this respect, has brought our attention to the copy of the letter dated 25.11.2019 written by the assessee to the Assessing Officer. Apart from the above stated facts, the assessee has also furnished the balance sheet of the company for F.Y 2016-17. The ld. Counsel has further invited our attention to page 20 of the paper-book which is the details of the Specified Notes and further submitted that the source of the entire cash deposits were duly furnished which the Assessing Officer failed to take note of. He has further submitted that total revenue of the assessee for the relevant year was 210 crores. He has further submitted that even there were duplicate entries which have been wrongly taken into account by the Assessing Officer. He, in this respect, has submitted that though the assessee has furnished all the details before the Assessing Officer, however, the Assessing Officer failed to take into consideration the same. Moreover, due to cancer to one of the directors who was the wife of the other director of the assessee, the earlier notices sent by the Assessing Officer could not be properly responded. The ld.

Counsel, therefore, has submitted that the assessee may be given an opportunity to present his case before the Assessing Officer.

7. The ld. DR, on the other hand, has relied upon the findings of the lower authorities. Having considered the above submissions of the ld. Counsel for the assessee, in our view, the interests of justice will be well-served if the assessee is given an opportunity to present his case before the Assessing Officer. In view of this, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for deciding the issue afresh in accordance with law. Needless to say that the Assessing Officer will give proper opportunity to the assessee to present his case and furnish the necessary documents.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 18th October, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 18.10.2023.

RS

Copy of the order forwarded to:

1. M/s Mohan Motor Business Pvt. Ltd
2. DCIT, Circle-11(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches