

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 660/JP/2023
निर्धारण वर्ष/Assessment Year : 2017-18.

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| Shri Aditya Jhanwar 155, Mahatma Gandhi Nagar, DCM Ajmer Road, Jaipur. | बनाम Vs. | Income Tax Officer, Ward 2(1), Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AZRPJ 7829 C | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Atharv Mundra, Advocate &
Ms Prabha Rana, Advocate.

राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 05/12/2023
उदघोषणा की तारीख / Date of Pronouncement: 02/01/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 01.11.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act for the assessment year 2017-18. The assessee has raised the solitary ground as under :-

" Confirming of unexplained cash credit u/s 68 of Rs. 36,50,000/- is bad in law and facts."

2. The brief facts of the case are that the assessee is an Individual, proprietor of M/s. Western Plywood Company which is engaged in the business of Plywood &

Hardware started a first trading venture. The assessee has filed his return of income on 29.10.2017 declaring total income of Rs. 7,30,820/-. The case was selected for scrutiny under CASS. The AO stated in the assessment order that as per information available with the department the appellant had made cash deposit in his bank account of Rs. 36,50,000/- during the demonetization period. During the course of assessment proceedings, assessee was asked to furnish complete details of cash deposits made by him during demonetization period and to prove the source of cash deposits made by him in his bank accounts during demonetization period. The assessee explained the source of cash deposit as sale proceeds of stock in trade during the year under reference. The assessee claimed that he had carried out business of plywood and hardware items in the name of M/s. Western Plywood Company. The assessee has also furnished stock details, cash book, sales details, purchase details, fixed assets details, VAT returns and other details in respect of income and expenses shown by him in his return of income. However, no day to day stock details were filed or produced. The assessee has also furnished the copies of online responses submitted by him regarding cash deposits made by him during the course of demonetization period. The assessee claimed that entire cash deposits made by him during the demonetization period were from alleged cash sales of M/s. Western Plywood Company, his proprietorship concern and from his earlier income or past savings. The AO considered the reply of the assessee but the same was not found acceptable, therefore, vide notice dated 21.11.2019 the assessee was asked to produce complete books of accounts along with certain details/documents. Since no response was made by the assessee, the AO issued show cause notice dated 02.12.2019 under section 142(1) requiring the assessee to show cause why the

amount deposited by you in the bank account not be held as your undisclosed income for the assessment year under consideration and taxed in terms of provisions of section 115BBE of the IT Act, 1961. The assessee was asked to furnish the reply along with evidence, details/documents on the date fixed for hearing on 05.12.2019. In response to above show cause notice, no reply has been furnished by the assessee nor books of accounts were produced/filed by the assessee. Accordingly, the AO completed the assessment vide his order dated 12.12.2019 at a total income of Rs. 43,80,820/- by making addition of Rs. 36,50,000/- on account of unexplained cash credit under section 68. Aggrieved by the assessment order, the assessee preferred an appeal before Id. CIT (A). The Id. CIT (A) upheld the order of the AO and thereby dismissed the appeal of the assessee.

Now the assessee is in appeal before the Tribunal.

3. Before me, the Id. A/R of the assessee submitted his written submissions as under :-

“ The facts in brief are that the assessee is a young individual, resident of India, proprietor of M/s Western Plywood Company which is engaged in the business of Plywood & Hardware started a first trading venture. The assessee purchased goods on credit and sold in cash. The sale proceeds was deposited into bank. The assessee also collected VAT from customers and deposited the same into Department after getting allowable input credit. The VAT department had not made any adverse inference on any transaction of purchase / sale of the assessee.

Your honour the contents of notice is appearing in the Ld. AO order page no. 3-5 point no. 3.5. The Ld. AO stated in Ld. AO order page no. 5 point no. 3.6 that the assessee had not filed the reply and accordingly, your honour the Ld. AO made the addition mainly on the ground that no stock details were produced on

05.12.2019, whereas the submission was made on line and the acknowledgement of the same is appearing in paper Book page no.2 and contents on page no. 4 point no. 6. The online submission of stock statement is appearing at page no.30 to 77. The assessee also furnished Cash Book appearing in paper book page no. 78-93. Your honour can be verified in the acknowledgement appearing on the paper book page no. 2 in which point no. 3 in the table showing stock tally. The acknowledgement also clear depicts that the same was furnished on 5.12.2019 i.e; well within time allowed by the Ld. AO. Hence stating of Ld. AO that no reply was filed is bad in law and facts. Further in Ld. AO order wrongly stated in Ld. AO order page no. 6 first para that the assessee had not provided stock details.

The AR further submits that the decisions of Hon'ble Supreme Court and various other decision relied by the Ld. AO in the case of SumatiDayal Vs. CIT and Durga Prasad More's case (supra) has no application in assessee's case. None of these case are not identical and none of the case laws relied upon by the Ld. AO are applicable in the assessee's case. In none of the cases, sales that were offered for taxation, was brought to tax again u/s 68. There was ample evidence to show that there were large number of cash deposit by the assessee and there is no justification for the AO to treat the sum of Rs.36,50,000/- as unexplained cash credit and accordingly request to delete the addition and allowed the appeal.

The assessee submitted before Ld. CIT Appeals (Kindly see Ld. CIT Appeals order page no. 6-7 in Ground no. 2) as under:-

- A. The Assessing Officer had erred classifying unexplained cash of Rs.36,50,000/- whereas the assessee has provided all necessary documents for supporting for depositing cash into the bank.**
- B. The assessee maintains the detailed stock register showing quantity wise details of each item,**

- C. Purchased are vouched and fully supported,**
- D. Sales are vouched and fully supported,**
- E. All sales and purchases are properly entered in Books of Accounts and verified with VAT returns filed for the relevant period. (Copy of VAT Returns were enclosed). Page No. 5 to 29.**
- F. Assessee also filed its VAT returns, which are not found to be in variance with the accounting and tax records.**
- G. Therefore, it cannot be substantiated that the transaction of the assessee are unexplained. (Agson Global Pvt. Ltd. v ACIT ITA No.3741- 3746/Del/2019 dated 31.10.2019)**

In addition to above, definition of books of accounts for the purpose of section 68 is as under:

- A. As per section 2(12A) of the Income Tax Act, books include ledgers, day books, cash books, account books and other books, whether kept in the written form or as print outs of data stored in floppy, disc, tope or any other form of electro-magnetic data storage device.**
- B. The assessee is maintaining proper books of accounts in Tally Software comprising with Cash Book, Bank Book, Ledger, Journal, Sales Register, Purchase Register and Stock Register. Final Accounts were also audited by Chartered Accountants, hence it cannot justified to say that cash deposited in banks of Rs.36,50,000/- as unexplained cash credit u/s 68 of the Income Tax Act, 1961.**
- C. The assessee has maintained day to day stock register and we have produced to respective ITO for verification on 02.12.2019. And also we have submitted complete stock statement as attachment with our reply dated 05.12.2019. (Copy of day to day Stock Statement is enclosed). Page No. 30 to 77**
- D. The assessee starts new business of Retail trading of Plywood and Hardware products from 15.10.2016, therefore comparison of sales from earlier year was not possible.**
- E. The assessee firm is deals in retails business of Plywood and Hardware products. The assessee started his business from 15.10.2016 just before of 'Diwali festival season and make target of end use customer and offered Diwali offer to our customer**

every sale on or before Diwali festival. Therefore the assessee received huge response from customers. The customers purchased small quantities for household furniture and billed amount between 10000/- to 50000/- in mostly cases. It is justified looking to the nature of business. Mostly retail customers make payment in cash. The cash deposited by the assessee was out of available cash balance on hand at that time. Day to day Cash book were already produced before Assessing Officer for verification during the course of Assessment Proceeding.” Despite the above submissions the Ld. CIT Appeals confirmed the addition.

1. Now the assessee, young new comer businessman, in appeal before your honour with folded hand to get the relief.
2. Your honour the Ld. AO made the addition mainly on the ground that no stock details were produced on 05.12.2019. whereas the submission was made on line and the acknowledgement of the same is appearing in paper Book page no.2 and contents on page no. 4. In Appeal before the Ld. CIT Appeals the assessee produced the acknowledgement of submission, the Ld. CIT appeal has not given any adverse inference. Instead the Ld. CIT Appeals took another plea to confirm the addition as appearing in the Ld. CIT Appeal order page no. 8 para 8.1 and 8.2.
3. The Id. CIT Appeals stated that the Ld. AO has clearly established the purchases claimed to have been made for the business by the appellant from Shree Jee International owned by his nephew was not genuine. The Ld AO finding in Ld. AO order page no. 7 point no. 12 is that the assessee has shown purchases of around two crore from M/s Shree Jee International and the goods was transported through Pick-up & Tempo for which nominal freight expenses of Rs. 488 was shown. Hence the Id. AO hold that this also makes it clear that the assessee’s business activities were not genuine and he has shown sales & purchases only to route his undisclosed cash amount in the books of accounts in the guise of cash sales. Your honour when the assessee incurs only freight expenses of Rs. 488 and therefore claimed this expenses. The evidence of purchase, transportation, VAT payment, banking transactions have not been found any adverse inference. Merely on this

ground, holding that the purchase from Nephew is not genuine is bad in law and facts.

4. The Ld. CIT Appeal further hold that the appellant has stated to have started his business from 15.10.2016 and got the registration for VAT on 27.10.2016 effective from 15.10.2016 but the alleged purchase bills were found to be dated 15.10.2016 with the TIN mentioned in it. It is surprising how the TIN which was communicated by the appellant on 27.10.2016 got mentioned in the purchase bills dated 15.10.2016, which therefore clearly established that the purchase made from Shree Jee International was not genuine but was designed for creating a business façade to root undisclosed cash deposit in the guise of business receipts. In this respect the AR submits that as per the Rajasthan Value Added Tax Rules, 2006 under CHAPTER IV of Registration Rule 12 (1) An application for grant of registration shall be submitted by a dealer within thirty days from the day on which he becomes liable to pay tax under sub-section (1) or (5) of section 3 of the Act. Hence soon the assessee received the registration the seller included the registration number. Your honour, both the lower authorities have no dispute that the VAT registration was with effect in from 15.10.2016. Hence, this ground of both the lower authorities also bad in law and facts.
5. The third point of the Lower authorities (Kindly see Id. CIT Appeals order page no. 8 point 8.2)that the appellant has claimed to have started his business from 15.10.2016 and allegedly had cash balance of Rs. 28,98,626/- and of RS. 34,54,362/- as on 31.10.2016 and 08.11.2016 respectively, as per cash book. Whereas, the appellant had deposited a cash of Rs 10,500/- in his newly opened bank account with SBI 05.11.2016. Hence it was observed that there seems to be no logic for a business entity to keep such a huge amount of cash in hand despite having two bank accounts in which only nominal cash were deposited. But, after declaration of demonetization of Rs 500 and Rs 1000 notes on 08.11.2016 the appellant started making huge cash deposits totaling to Rs. 36,50,000/-, which clearly indicate that

the appellant had undisclosed cash in his hand which was deposited during demonetization period with the help of colorable device created for the sole purpose of routing undisclosed cash through it. i.e the business in the name and style M/s Western Plywood Company. Whereas the established fact is that the assessee made purchase in credit, whereas sale is in cash. Because of demonetization the assessee had deposited entire sales proceeds in the business in Specified Bank Notes, because, Specified Bank Notes cannot be a valid tender after specified date. The AO has just made imagination / assumption and go by preponderance of probability without providing any finding / any irregularity in cash book, sales invoices, accounts books. The Ld. AO has not give any valid and cogent reasons to reject the arguments of the assessee. The Ld. AO never disputed the fact that the assessee was which is engaged in the business of Plywood & Hardware and Sales was in cash and other than Cash. The details of which is as under:-

| Quarter ended | PB Pno | Total Sales |
|-----------------------------|---------------|-----------------------|
| 31st Oct; 2016 | 5 | 1,13,92,138.90 |
| 31st Mar;2017 | 18 | 54,67,336.31 |
| Total for AY 2017-18 | | 1,68,59,475.21 |

6. From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The Ld. AO had not accepted cash deposited for sale proceeds of Rs.36,50,000 but accepted sales which were made by other than cash. From the above, it is very clear that the observation of the AO is nothing, but merely a suspicion and therefore, is requested that the reasons given by the Ld. AO to make additions towards cash deposits is incorrect. The cash deposits are part of business receipt as per return of income. The bank accounts were disclosed in the return of income and it is not a

case of cash deposit made in that accounts which are not disclosed in the return of income. The assessee furnished copy of cash book. The Ld. AO has not made any findings as to why the cash deposits are undisclosed or unexplained. It is not the case that the cash deposits made in the savings bank account or accounts which are not disclosed in the return of income. No adverse material was brought on record. The assessee right from the beginning is claiming that cash amount deposited in the banks is a part of business transaction made in cash. Therefore, the AR request that additions made by the AO should be deleted.”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. I have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. Before me, the Id. A/R of the assessee submitted that the AO has made the addition mainly on the ground that no stock details were produced on 05.12.2019 whereas the submission was made online and the acknowledgement of the same is appearing in paper book page no. 2 and contents on page no. 4 point no. 6. The online submission of stock statement is appearing at pages no. 30 to 77. The assessee also furnished Cash Book appearing in paper book pages no. 78-93 and it can be verified from the acknowledgement appearing on the paper book page no. 2 in which point no. 3 in the table showing stock tally. The acknowledgement also clear depicts that the same was furnished on 5.12.2019 i.e. well within time allowed by the AO. Hence stating of AO that no reply was filed is bad in law and facts. The Id. A/R stressed that the AO was wrong in stating at page 6 of his order that the assessee had not provided stock details. The Id. A/R further submitted that the assessee has also produced the

acknowledgement/submission before the Id. CIT (A) and he has not expressed any adverse inference. The A/R submitted that the decisions of Hon'ble Supreme Court and various other decision relied by the AO in the case of Sumati Dayal Vs. CIT and Durga Prasad More's case has no application in assessee's case. None of these cases are identical to the case of the assessee and none of the case laws relied upon by the AO are applicable in the assessee's case. In none of the cases, sales that were offered for taxation, was brought to tax again u/s 68. There was ample evidence to show that there were large number of cash deposit by the assessee and there is no justification for the AO to treat the sum of Rs.36,50,000/- as unexplained cash credit. At the appellate proceedings before the Id. CIT (A), the assessee submitted as under :

- The Assessing Officer had erred classifying unexplained cash of Rs.36,50,000/- whereas the assessee has provided all necessary documents for supporting for depositing cash into the bank.
- The assessee maintains the detailed stock register showing quantity wise details of each item,
- Purchased are vouched and fully supported,
- Sales are vouched and fully supported,
- All sales and purchases are properly entered in Books of Accounts and verified with VAT returns filed for the relevant period. (Copy of VAT Returns were enclosed). Page No. 5 to 29.
- Assessee also filed its VAT returns, which are not found to be in variance with the accounting and tax records.
- Therefore, it cannot be substantiated that the transaction of the assessee are unexplained. (Agson Global Pvt. Ltd. v ACIT ITA No.3741- 3746/Del/2019 dated 31.10.2019)

In addition to above, definition of books of accounts for the purpose of section 68 is as under:

- a. As per section 2(12A) of the Income Tax Act, books include ledgers, day books, cash books, account books and other books, whether kept in the written form or as print outs of data stored in floppy, disc, tape or any other form of electro-magnetic data storage device.
- b. The assessee is maintaining proper books of accounts in Tally Software comprising with Cash Book, Bank Book, Ledger, Journal, Sales Register, Purchase Register and Stock Register. Final Accounts were also audited by Chartered Accountants, hence it cannot be justified to say that cash deposited in banks of Rs.36,50,000/- as unexplained cash credit u/s 68 of the Income Tax Act, 1961.
- c. The assessee has maintained day to day stock register and we have produced to respective ITO for verification on 02.12.2019. And also we have submitted complete stock statement as attachment with our reply dated 05.12.2019. (Copy of day to day Stock Statement is enclosed). Page No. 30 to 77
- d. The assessee starts new business of Retail trading of Plywood and Hardware products from 15.10.2016, therefore comparison of sales from earlier year was not possible.
- e. The assessee firm is deals in retails business of Plywood and Hardware products. The assessee started his business from 15.10.2016 just before of 'Diwali festival season and make target of end use customer and offered Diwali offer to our customer every sale on or before Diwali festival. Therefore the assessee received huge response from customers. The customers purchased small quantities for household furniture and billed amount between 10000/- to 50000/- in mostly cases. It is justified looking to the nature of business. Mostly retail customers make payment in cash. The cash deposited by the assessee was out of available cash balance on hand at that time. Day to day Cash book were already produced before Assessing Officer for verification during the course of Assessment Proceeding."

The Id. A/R submitted that the evidence of purchase, transportation, VAT payment, banking transactions have not been found any adverse inference. The Id. CIT (A) has upheld the addition merely on the ground the purchase from Shree Jee International owned by assessee's Nephew is not genuine is bad in law and contrary

to the document/evidences furnished by the assessee. In this respect the A/R submits that as per the Rajasthan Value Added Tax Rules, 2006 under CHAPTER IV of Registration Rule 12 (1) an application for grant of registration shall be submitted by a dealer within thirty days from the day on which he becomes liable to pay tax under sub-section (1) or (5) of section 3 of the Act. Hence as soon as the assessee received the registration, the seller included the registration number. Both the lower authorities have not disputed that the VAT registration was with effect in from 15.10.2016. Hence, both the lower authorities were not justified in observing that the purchases made from Shree Jee International were not genuine.

The Id. CIT (A) observed in his order that the allegedly had cash balance of Rs. 28,98,626/- and Rs. 34,54,362/- as on 31.10.2016 and 08.11.2016 respectively, as per cash book, when the assessee has started his business from 15.10.2016. Whereas, the appellant had deposited a cash of Rs. 10,500/- in his newly opened bank account with SBI on 05.11.2016. Hence it was observed there seems to be no logic for a business entity to keep such a huge amount of cash in hand despite having two bank accounts in which only nominal cash were deposited. In this respect the Id. A/R explained that the established fact is that the assessee made purchases in credit, whereas sales are in cash. Because of demonetization the assessee had deposited entire sales proceeds in the business in Specified Bank Notes, because, Specified Bank Notes cannot be a valid tender after specified date. The AO has just made imagination / assumption and go by preponderance of probability without providing any finding / any irregularity in cash book, sales invoices, accounts books. The Id. AO has not given any valid and cogent reasons to reject the arguments of the assessee. The AO never disputed the fact that the assessee was

engaged in the business of Plywood & Hardware and Sales were made in cash and not otherwise. The details of which are as under:-

| Quarter ended | PB Pno | Total Sales |
|-----------------------------|---------------|-----------------------|
| 31st Oct; 2016 | 5 | 1,13,92,138.90 |
| 31st Mar;2017 | 18 | 54,67,336.31 |
| Total for AY 2017-18 | | 1,68,59,475.21 |

From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The AO had not accepted cash deposited for sale proceeds of Rs.36,50,000/- but accepted sales which were made by other than cash. From the above, it is very clear that the observation of the AO is nothing, but merely a suspicion and therefore, the reasons given by the Ld. AO to make additions towards cash deposits is incorrect. The cash deposits are part of business receipt as per return of income. The bank accounts were disclosed in the return of income and it is not a case of cash deposit made in that accounts which are not disclosed in the return of income. The assessee furnished copy of cash book. The AO has not made any findings as to why the cash deposits are undisclosed or unexplained. It is not the case that the cash deposits made in the savings bank account or accounts which are not disclosed in the return of income. No adverse material was brought on record. The assessee right from the beginning is claiming that cash amount deposited in the banks is a part of business transaction made in cash.

6. Therefore, in the totality of facts and circumstances of the case discussed herein above, I am of the view that considering the documents and evidences furnished and explanation given, the assessee deserves to succeed. I set aside the order of the Id. CIT (A) by deleting the addition.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 02 /01/2024.

Sd/-

(संदीप गोसाई)

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02/01/2024.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Aditya Jhanwar, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 660/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar