

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.2467/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2017-18)

Param Gold Shop No.1, Hansa Heritage, Mathurdas Road, Kandivali (W), Maharashtra-400067.	बनाम/ Vs.	ITO, Ward-42(1)(4) Kautilya Bhawan, Bandra Kurla Complex, Bandra (East), Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQFP5462K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Piyush Chhajed	
Revenue by:	Shri H. M. Bhatt (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 08/12/2023

घोषणा की तारीख /Date of Pronouncement: 16/01/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai dated 31.05.2023 for the assessment year 2017-18.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the addition of Rs.5,72,90,000/- u/s 68 of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts as noted by the AO are that the assessee is a partnership firm, which has been engaged in the business of retailing gold and other precious jewellery since November 2014. The AO has noted that there were no sales in the year ended 31st March 2015 and that the assessee firm had filed its Profit and Loss Account and Balance Sheet and submitted the return of income for the year ended 31st March 2016. The AO observed that during the relevant year, the assessee had



deposited Specified Bank Notes ('SBN') to the tune of Rs.5,72,90,000/- post demonetization between 09.11.2016 to 30.12.2016. Upon enquiry from the assessee firm, the AO gathered that according to the assessee the source of cash deposits were the proceeds received from cash sales of gold and precious jewellery in the month of October 2016. The AO however is noted to have doubted the explanation furnished by the assessee. The AO observed that, the sales of the assessee firm in the relevant period i.e. October 2016, had increased by manifolds compared to October 2015. The AO further noted that normally the cash balance of the firm was between Rs.1 lac to Rs. 20 lacs, but the firm carried cash balance of Rs. 568 lacs on 8th November 2016, which according to the AO was abnormally high. The AO further noted that there was no significant increase in the operating expenses of the retail showroom, which would corroborate the increased sales during the relevant year. According to him therefore, the increase in sales were not supported by the surrounding facts and circumstances. The AO further noted that, the assessee did not provide the full details of the customers to whom these sales were made and also withheld the cashbook as per tally accounting, which would otherwise reveal the running closing balance. The AO observed that the debit and credit entries in the cashbook furnished by the assessee did not have any narrations and therefore he held that the cashbook submitted was not properly maintained and therefore not believable. With these observations, the AO rejected the books of accounts. The AO however accepted part book results and started the computation of total income with reference to the net profit as per the audited Profit & Loss Account of Rs.19,02,143/-, from which he



proportionately reduced the net profit attributable to the cash sales of Rs.5,72,90,000/-, which proceeds were deposited during the demonetization period and accordingly, computed net taxable business income at Rs.10,85,638/-. The AO thereafter separately added the cash deposits of Rs.5,72,90,000/- u/s 68 of the Act and thereby assessed the total income of assessee-firm at Rs.5,83,75,640/-. Aggrieved by this order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the action of the AO. Now the assessee is in appeal before us.

4. We have heard both the parties and perused the material placed before us. The admitted and uncontroverted facts before us is that the assessee firm is engaged in the business of retail trading of gold and jewellery. During the relevant year, the assessee had achieved sales turnover in this business of Rs.1334.63 lacs which *inter-alia* comprised of receipts of Rs.572.90 lacs whose proceeds were deposited during the demonetization period. These sales are found recorded in the sales register, stock register, cashbook etc. The impugned sum also formed part of the overall sales credited in the P&L A/c and offered for taxation under the 'Business Income'. It is noted that the AO has tabulated the stock movement details along with details of sales and it is not in dispute that the movement of stock fully reconciles with the reported sale proceeds which were later on deposited during the demonetization period. It is also noted that the assessee had credited the sale proceeds to its Profit & Loss Account and offered the same to tax. The AO is however noted to have only casted aspersions on the sales to the tune of



Rs.572.90 lacs made by the assessee, but at the same time, he is noted to have accepted the balance sales of Rs.761.73 lacs and also the profits derived therefrom. We thus find force in the initial submission of the Ld. AR that, the action of the AO accepting the book results in part and rejecting the book results only qua the proceeds which were deposited during the demonetization period was not proper in law.

5. As noted above, the AO had doubted the manifold increase in sales in comparison to the preceding year and therefore inferred that the sales made during the month of October 2016 was not genuine. Before us, the Ld. AR pointed out that the AO himself had taken note of the fact that, the sales for FY 2014-15 was NIL and that there was a substantial increase in turnover compared to FY 2014-15 in the next FY 2015-16, in which the assessee reported turnover of Rs.1035.30 lacs. According to the Ld. AR therefore, the increase in turnover to Rs.1334.63 lacs in FY 2016-17 cannot be doubted and that this particular reason was only a surmise of the AO. The Ld. AR pointed out that, the AO had neither made out a case that the stock which was sold in the month of October 2016 was actually not available with the assessee nor that the stock movement as per the books of accounts suffered from any discrepancy. The Ld. AR also showed us that the assessee had made purchases of Rs.2169.79 Lacs in previous year i.e. FY 2015-16, when assessee reported sales of Rs.1035.30 Lacs; and had for the relevant year under consideration had made purchases of Rs.1162.43 lacs as against the sales achieved during the year and genuineness of these purchases were also not in doubt. According to him



therefore, when the stock movement and purchases had been accepted by the AO, it was not justified on the AO's part to disbelieve the sale not because there was a substantial increase in comparison to the preceding year. Having considered the foregoing, we hold that this particular reasoning cited by the AO was not tenable.

6. Before us, the Ld. DR for the Revenue, however emphasized on the AO's findings that the details of sales i.e., the name and complete address of the customers were not provided by the assessee and therefore according to him, the AO had rightly disbelieved the genuineness of the sales to the extent of Rs.572.90 lacs. Per contra, the Ld. AR pointed out that the appellant had not furnished such details in relation to its entire sales of Rs.1334.63 lacs and therefore the AO's action of selectively picking, choosing and disbelieving only those sales whose proceeds were deposited during the demonetization period was completely arbitrary. The Ld. AR reiterated that, the assessee firm was engaged in retail trading of gold and precious jewellery and therefore by its very nature of retail trade, the sales were made to flying customers over the counter for which cash memos/sale bills were issued, for which complete details of customers were not required to be taken, as none of these over-the-counter sales were on credit. He further brought to our notice that, Rule 114B of the Income Tax Rules, 1962 also required obtaining the PAN of only those customers to whom sales per transaction exceeded Rs.2,00,000/-. It is noted that similar limit had been set out in Rule 114E of the Income Tax Rules, 1962. The Ld. AR showed us that, the sale made by the assessee firm did not exceed



Rs.2,00,000/- per customer and therefore it was not required to maintain the relevant KYC details of such customers to whom sales were made, in law. According to him therefore, when the assessee firm was not required to maintain such details of customers under the law, the Revenue was unjustified in calling for the same and thereafter drawing adverse inference for want of the same. He further pointed out that, the fact that the AO did not require such details in relation to the balance sales of Rs.761.73 lacs substantiates the case of the assessee that, it was not required to maintain and provide the full details of customers to whom sales made were less than Rs.2,00,000/-. Having considered these peculiar facts and the position of law, particularly Rule 114B & 114E, prevailing in that year, we are unable to countenance this contention of the Ld. DR for disbelieving the sales. For this, we may gainfully refer to the following observations made by the Vishakapatnam Tribunal in the case of ACIT Vs Hirapanna Jewellers (128 taxmann.com 291) wherein sales made to 270 different customers was held to be plausible by observing as follows:-

“7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore, we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-



availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.”

7. The next reason given by the AO to disbelief the sales and thereby reject the books of accounts was that, the cashbook furnished by the assessee was not in a proper manner. According to the Ld. AR, this particular reason was also irrelevant and misplaced on the given facts of the present case, particularly to make the impugned addition u/s 68 of the Act. He submitted that, the burden cast on an assessee u/s 68 of the Act, is to substantiate the nature and course of credits found in the books of accounts, and the amount in dispute before us is Rs.572.90 lacs. The Ld. AR explained to us that, the assessee at all times had maintained that the source of credit entries in the cash book was the proceeds received from sales, which in turn was deposited into the bank account and the same was reflected by way of debit entries in the cashbook. As noted by us above, the stock movement as well as the purchases made by the assessee firm are not in doubt. It is not the case of the Revenue that the assessee did not hold the stock in its books at the end of September 2016, out of which sales were made in the month of October 2016 to the tune of Rs.572.90 lacs. Also, the corresponding purchases out of which these



sales were made have not been doubted or questioned by the AO. It was also brought to our notice that a survey action u/s 133A of the Act was conducted upon the assessee firm on 27.03.2017 and no adverse material / finding were pointed out by the Investigating Authorities, which would support the AO's case for disbelieving the sales and the cashbook. The Ld. AR submitted that, the survey authorities had not pointed out any defect or infirmity in the cash sales made during October 2016, stock movement as well as the cashbook etc. According to him, if the cash deposited during the demonetization period was not out of the cash sales, then the survey authorities ought to have found equivalent value of physical stock, which was shown to have been sold by the assessee. However, according to him, the fact remained that there was no discrepancy found in the physical stock and the stock as per books of accounts by the survey authorities, nor was any discrepancy found in the sales as well as the purchases of the assessee firm. The Ld. DR was also unable to bring anything contrary on record to controvert this submission of the assessee. Having regard to the foregoing therefore, we find merit in the submissions of the Ld. AR that the nature and source of cash recorded by way of credit entries in the cash book, which in turn was deposited into the bank account, had been explained in as much as the source comprised of the sale proceeds of gold and precious jewellery. On these specific facts therefore, according to us, the averments made by the AO regarding non mentioning of narrations in the cashbook or non-provision of daily running cash balance cannot be sufficient reason to disbelieve the nature and source of cash recorded by way of credit entries in the cashbook, as the same had indeed been



explained by the assessee and no adverse material in this regard was unearthed by the survey authorities in the course of survey conducted u/s 133A during the relevant year.

8. In view of the above facts therefore, according to us, the sale proceeds of Rs.572.90 lacs which were deposited during demonetization period and offered by way of revenue receipts from 'Business' by the assessee-firm, is found to be explained and therefore we hold that the lower authorities were unjustified in assessing these sale proceeds as unexplained cash credit u/s 68 of the Act. Accordingly, the addition of Rs.572.90 lacs made u/s 68 of the Act is hereby deleted and the grounds of appeal raised by the assessee stands allowed.

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

Order pronounced in the open court on this 16/01/2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 16 /01/2024.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



10

ITA No.2467/Mum/2023
A.Y. 2017-18
Param Gold

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai