

**।आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "A" :: PUNE**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL  
MEMBER AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपीलसं. / ITA No.1242/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2016-17**

Dilip Juharmal Jain, Bazarpeth, Mirchi Galli, At and Post Pen Tal Pen Dist, Raigad – 402107. PAN: AAPPJ5566P	V S	The ACIT, Circle Panvel.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Subodh Ratnaparkhi – AR
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	10/01/2024
Date of pronouncement	24/01/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the assessee against the order of ld.Commissioner of Income Tax(ld.CIT(A))[NFAC], under section 250 of the Act dated 07.11.2023 emanating from the assessment order under section 143(3) of the Act dated 05.11.2018 . The grounds of appeal raised by the assessee are as under :

*"1. The Hon. CIT(A) erred in confirming the addition of Rs.39,67,841/- made by the ld AO by holding the cash on hand as at 31.03.016, as reflected on the asset side of the audited balance sheet of M/s Jayhind Agency, the proprietary firm of the appellant dealing in food grains, oil and other related products to be unexplained cash credit, liable for tax u/s 68 of the I.T Act,*

1961, which addition being not justified may kindly be deleted.

2. *The appellant craves leave to add, alter, amend and/or vary the grounds of appeal at any time before the decision of the appeal.*”

## 2. Submission of Id.Authorised Representative(Id.AR) :

1. The appellant is an individual engaged in the business of trading in food grains, oil and other related products in the name of his proprietary firm, M/s. Jayhind Agency. The only ground of appeal challenges addition of **Rs. 39,67,841/-**, holding cash in hand as at 31.03.2016 reflected by audited books of accounts for A.Y. 2016-17 to be unexplained cash credit u/s 68 of the I. T. Act, 1961.

The balance sheet of the proprietary firm of the appellant, M/s. Jayhind Agency reflects cash balance of **Rs. 39,67,841/-** on the asset side of the balance sheet as “cash in hand” as on 31.03.2016. The Id. AO has doubted the genuineness of such cash balance reflected by the audited books of accounts of the said proprietary firm of the appellant. It is the case of the Id. AO that the accounts may have been manipulated in such manner that cash deposited in the bank post de-monetization, which took place on **08.11.2016** has been re-created in the balance sheet as at **31.03.2016** to grant legitimacy to such cash deposited in the bank account in the subsequent period. This presumption has prompted the Id AO to make addition of Rs.39,67,841/- being cash balance reflected by the Audited Balance-Sheet of the appellant as at 31.03.2016 to be unexplained cash credit u/s 68 of the I.T Act, 1961.

2. As mentioned above, the entire reasoning given by the Id. AO in the asst. order to support the addition is based upon un-substantiated presumption with regards to manipulation of books of accounts and is fallacious for the following reasons

- (i) The cash balance of Rs. 39,67,841/- as at 31.03.2016 was fully deposited in the bank account of the appellant in April 2016, itself and bank statement evidencing such deposit submitted to the Id AO/Hon. CIT(A) in proceedings before them. The say of the Id AO at para 4.2/pg no. 4 of the asst. order, that the demonetization declared on 08.11.2016 prompted entries in books of accounts for F.Y. 2015-16 as an afterthought, is therefore totally incorrect. Kindly appreciate total cash deposited in bank account in April 2016 is of Rs.44,80,000/-. Thus, no part of cash-in-hand of Rs. 39,67,841/- was deposited during demonetization period of 08.11.2016 to 31.12.2016. *Bank statement for April 2016 with entries of cash deposit duly highlighted appear at pg no. 63 to 67 of paperbook.*
- (ii) Even though the return of income for A.Y. 2016-17 was e-filed on 19.11.2016 i.e after the date of de-monetization, the tax audit report alongwith balance sheet and the profit and loss account for A.Y. 2016-17 were uploaded by the appellant on the portal of the tax department on 12.10.2016 itself i.e. prior to the date of demonetization. This is verifiable from the I.T. portal today also. *Kindly refer to pg no. 95 of paperbook for screenshot from I.T. portal reflecting filing of Audit Report u/s 44AB on 12.10.2016.*

It is pointed out that actual deposit of cash in the bank account in April 2016 and uploading of audit report and financial statements on 12.10.2016 have taken place prior to the date of de-monetization which was 08.11.2016. The entire theory propagated by the Id. AO about re-creating of accounts to support cash deposited in the bank account after de-monetization is incorrect. The appellant has filed his return of income on 19.11.2016 for the reason that S.A. tax was paid on 27.10.2016, after which date the ITR was e-filed.

The relevant documents submitted before the Id AO appear in the paperbook as under.

Sr. No.	Nature of documents	Enclosed at pg nos. of the paperbook
1	Statement explaining nature of business activity and source of cash balance as on 31.03.2016	07 & 08
2	Statement showing month wise summary of cash receipts and expenditure	09 to 14
3	Bank statement for the period 01.04.2015 to 30.04.2016	15 to 67
4	Screenshot from I.T. portal reflecting filing of Audit Report u/s 44AB on 12.10.2016.	95

3. The Id AO, at para no. 4.3/page no. 5 of the assessment order has mentioned that the appellant has not provided cash book for AY 2016-17, which raised doubt about books of accounts. In this regard it is humbly submitted that as the cash book data is voluminous containing approx 6,000 entries, the appellant could not electronically upload the same. However, statement showing month wise summary of cash receipts and expenditures was placed before the Id AO vide submission dt. 26.10.2018, which is nothing but the summary of cash book only. *Kindly refer to page nos. 09 to 14 of paperbook.* The Id AO, even though relevant data was uploaded did not cause any verification to be carried out by the verification unit of assessment. In such circumstances, it would not be open to the Id AO to take an adverse view, when the technical restriction placed by e-assessment procedure restricts certain abilities of the appellant to upload data. In any case, the appellant was filed before the Hon. CIT(A) excel sheet of cash book as "**Annexure B**". The same stood ignored by the Hon. CIT(A).
4. One of the reasons stated by the Id AO to reject the appellants claim is that appellant has deposited cash of 300000 + 280000 + 135000 + 100000 in his bank account in the last 4 days of March 2015 (*para 6.2/pg no. 5 & 6 of asst. order*). In the said regards, it is pointed out that appellant is based in rural area of Raigad District and carries on business in his proprietary capacity. Due to pressure of carrying on business in proprietary capacity, the appellant is unable to visit bank personally and has to depend upon employees to deposit cash in bank. In such circumstances, cash deposited is of smaller amounts to the extent required for making payments for purchases. (*Kindly see page nos. 61 & 62 of paperbook for relevant bank statement*). Larger amounts are deposited by the assessee personally. This is a security measure.
5. It is further not the case that substantial cash balance is reflected by audited books of accounts for A.Y. 2016-17 only. The cash in hand as per audited books of accounts for earlier 3 asst. years is as under.

Sr. no.	Asst. yr.	Cash in hand as at	Cash in hand (Rs)	Page no. of paperbook
(i)	2013-14	31.03.2013	7,52,644/-	70
(ii)	2014-15	31.03.2014	25,16,266/-	73
(iii)	2015-16	31.03.2015	1,42,960/-	76

The existence of such cash-in-hand is not disputed in any of the earlier asst. years.

6. The addition made by the ld. AO is not justified for the simple reason that the source of cash balance is from proprietary business M/s. Jayhind Agency carrying on grocery business in and around Pen, Alibaug and Murud areas dealing in food grains as well as oil on retail as well as wholesale basis. Kindly note the statement of the ld AO at para no.2/pg nos. 1 & 2 of the asst. order. The ld AO has accepted the turnover of the appellants proprietary firm, M/s. Jayhind Agency to be **Rs.16,09,72,189/-**. Thus, the business activity of the appellant is not in dispute. The business being in mofussil area, the customers purchase goods and make payment in cash. The disputed cash balance has arisen on account of cash sales by the appellant. It is accordingly submitted that the entire deposit is out of cash sales of the appellant and hence none of the deposits in the said bank account are from sources which cannot be explained. Addition of the said amount u/s 68 of the I.T Act, 1961, results in double addition of the same amount, once as part of sales declared by the appellant and again as deemed income u/s 68 as held by the ld. AO. This it is humbly submitted is not justified.
7. The addition of an amount declared as cash in hand, on the asset side of balance sheet as at 31.03.2016, filed with the return of income prepared as per audited books of accounts, as unexplained cash credit u/s 68 of the I.T Act, 1961, is also not justified as the amount is not credited in the books, but appears as a debit balance. Apart from the above, addition u/s 68 or otherwise, can only be made in the year of cash deposit in the bank account. Undisputedly cash has not been deposited in the bank account in previous year relevant to A.Y. 2016-17. Addition u/s 68 is therefore legally unjustified, so far as it relates to A.Y. 2016-17.
8. The addition Rs.39,67,841/-, being the cash-in-hand reflected by the balance sheet of the appellant as at 31.03.2016 is also not justified, as the said cash balance arises out of undisputed cash sales, which are duly supported by the audited books of accounts and subsidiary records. In absence of books of account being rejected u/s 145(3) of the I.T Act, 1961, the addition of the said amount is not justified. Reliance place on the decision of the Hon. Mumbai ITAT in the case of *R. S. Diamonds India (P) Ltd.-vs-ACIT, 145 taxmann.com 545 (Mumbai - Trib.) [2022]*.
9. **Without prejudice**, the appellant submits that even if the “cash in hand” as per audited books of accounts as on 31.03.2016 is disputed for any reason, there cannot be any addition to total income. No deduction or tax benefit is taken by the appellant in respect of such cash balance in A.Y. 2016-17. The cash balance as on 31.03.2016, emanating from cash sales of the year, is reflected on the asset side of Balance Sheet as at 31.03.2016. Accordingly, no income liable to tax arises in the hands of the appellant on account of reflection of such cash balance.
10. It is humbly pointed out that the action of the ld AO, by making addition of the entire cash balance of Rs.39,67,841/-, results in zero cash balance as on 31.03.2016, which is impossible considering the undisputed sales turnover of Rs. 16,09,72,189/- in respect of the proprietary business of the assessee.
11. The appellant prays that the appeal may kindly be allowed.

**Submission of ld.Departmental Representative(ld.DR) :**

3. The ld.DR for the Revenue relied on the order of the Lower Authorities.

**Findings and analysis:**

4. The only issue for consideration is addition of Rs.39,67,841/- made under section 68 of the Act by the Assessing Officer(AO).

5. The Assessee is a trader and trading in foodgrains, oil and other grossery items under the proprietary concern M/s.Jai Hind Agency. During the year, assessee's turnover was Rs.16,09,72,189/- and Net Profit was Rs.16,38,103/-. During the assessment proceedings, the AO observed that assessee had shown cash in hand in the balance sheet at Rs.39,67,841/-. The AO added the said amount under section 68 of the Act. The AO had alleged that such high cash in book is not possible in the said business. The AO had discussed demonetization in the assessment order.

5.1 For ready reference section 68 is produced as under :

***Cash credits.***

**68.** *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :*

*Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

6. Thus, as per section 68 of the Act, where any sum is found credited in the books of assessee and the explanation offered is not satisfactory then the credited amount can be added under section 68 of the Act. In this case, admittedly Rs.39,67,841/- was shown as cash in hand in the balance sheet. The cash in hand in the balance sheet is on the asset side of the balance sheet. Therefore, we asked a specific question to ld.DR how an item appearing on the asset side of the balance sheet can be added under section 68 of the Act. However, ld.DR simply relied on the order of the AO and ld.CIT(A). An item appearing on the Asset side of Balance Sheet is not a “Credit in the books”, hence it cannot be added under section 68 of the Act. It is also a fact that the assessee had uploaded on Income Tax Portal Audit

Report, Financial Statements on 12.10.2016. Thus, the Audit Report was uploaded much before demonetization dated i.e.08.11.2016.

7. In these facts and circumstances of the case, we are of the considered opinion that the addition made under section 68 of Rs.39,67,841/- is unsustainable in law. Therefore, we direct the AO to delete the addition of Rs.39,67,841/- made under section 68 of the Act. Accordingly, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 24<sup>th</sup> Jan, 2024.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> January, 2023/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.