

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 274/Ind/2023
Assessment Year: 2017-18

Ritesh Suresh Jaiswal, Dhawali, Sendhwa, Khargone	बनाम/ Vs.	Assessing Officer, National Faceless Assessment Centre, Delhi
(Appellant/Assessee)		(Respondent/Revenue)
PAN: AIBPJ7676E		
Assessee by	Shri Pankaj Shah and Soumya Bomb, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	13.02.2024	
Date of Pronouncement	15.02.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 31.05.2023 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 29.03.2022 passed by learned National Faceless Assessment Centre, Delhi ["AO"] u/s 147 r.w.s.144 & 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

1. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in making addition of Rs. 13,81,800/- to the income of the appellant*

u/s 69A of the Act on the alleged ground of unexplained income. The appellant prays that the additions be directed to be deleted.

2. *Without prejudice to above, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in applying provisions of Section 115BBE in the case of the appellant by failing to take into consideration the evidences given under submissions. Accordingly, the appellant prays that the application be directed to be deleted.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not giving reasonable consideration to the submissions made by the appellant during the course of proceedings and so the appellant prays that the impugned order being illegal, unwarranted and in gross violation of principles of natural justice be directed to be quashed and consequent addition deleted."*

2. The background facts leading to present appeal are such that the assessee-individual is engaged in liquor business. For the relevant AY 2017-18, the assessee filed original return u/s 139(1) on 31.10.2017 declaring a total income of Rs. 17,97,870/-. Subsequently, the AO re-opened assessee's case u/s 147 by issuing a notice dated 31.03.2021 u/s 148 requiring the assessee to re-submit return. However, the assessee did not file return and the AO completed assessment u/s 144. During assessment-proceeding, the AO issued statutory notices u/s 142(1) asking assessee to explain the source of cash-deposits made in bank a/c during demonetization period. In response, the assessee filed reply and made submissions. After consideration, the AO found that the assessee made an aggregate deposit of Rs. 13,81,800/- in demonetized currency (called "Specified Bank Notes") from unexplained source. Accordingly, the AO made addition of Rs. 13,81,800/- u/s 69A and also charged tax at a higher rate u/s 115BBE. Aggrieved, the assessee carried matter in first-appeal but could not succeed. Still aggrieved, the assessee has come in next appeal before us.

3. Before us, Ld. AR for assessee filed a written-submission and also made oral arguments. In his submissions, Ld. AR filed month-wise data of cash deposits made by assessee in bank a/c, month-wise data of sales made by assessee and overall cash-flow statement for the year. These data are for the period from 01.04.2016 to 31.03.2017 i.e. financial year 2016-17 relevant to AY 2017-18 under consideration. Referring to same, Ld. AR basically harped on the points (i) that the assessee is engaged in liquor business where the volume of cash-sales is much higher; (ii) that the impugned cash-deposits of Rs. 13,81,800/- constitutes just 1% of total sales for the year, which is quite miniscule; (iii) that the pattern of sales as well as cash-deposits in bank a/c of assessee for the year 2016-17 is broadly normal and there is no abnormality so as to warrant any adverse inference; (iv) that the impugned cash-deposits of Rs. 13,81,800/- have been made by assessee out of sales already recorded in books of account and since the sales is independently assessed by department, a further addition of impugned cash-deposits treating them as unexplained u/s 69A has resulted in double addition which should not happen. Therefore, in his view, the addition made by AO must be deleted.

4. Per contra, Ld. DR for revenue strongly supported the orders of lower-authorities. He submitted that both of the lower-authorities, namely AO and CIT(A), have made a concurrent observation that the assessee has not filed concrete submission to explain the source of impugned deposits made

during demonetization period. He submitted that the statistical data filed by assessee also requires proper verification.

5. We have considered rival submissions of both sides and perused the orders of lower-authorities. At first, on perusal of the orders of lower-authorities, we find that it is a case of re-opening of assessment of AY 2017-18 under consideration by AO. The reason of re-opening is mentioned by AO in Para No. 2 of assessment-order as under:

"During assessment proceedings of the assessee for A.Y. 16-17, it was noted that the assessee had increased substantially cash in hand to justify the cash deposits made during demonetization period in A.Y. 2017-18. Increased cash was not justifiable hence, protective addition was made to reopen the case in A.Y. 2017-18. Unverified cash deposited during demonetization period was Rs. 30,20,000/- which has escaped assessment."

Further, in Para 5(g) of assessment-order, the AO has made a detailed note as under:

"(g) During the course of assessment proceedings for assessment year 2016-17, it was noticed that the assessee had filed the return of income on 31.10.2017, which was much after the due date of filing of return i.e. 30.09.2016. While concluding the assessment proceedings for the A.Y. 2016-17 the AO observed as below :-

" The copy of cash book has been produced but supporting sale bills and stock register has not been produced. The total sales are Rs. 21.35 Crore as against purchase of Rs. 6.41 crores. There is no closing stock. Therefore, in absence of sale bills it can be safely concluded that the assessee has inflated sales to explain the source of cash deposit in the subsequent year. Therefore, the arguments of the assessee in absence of

documents is not acceptable and cash equivalent to the amount Rs. 30,20,000/- which is deposited during the course of demonetization period is added to the total income of the assessee. Since the assessee has inflated the cash balance for explaining the cash deposit in demonetization period where the tax rate u/s 115BBE is 77.25% the amount is added in the A.Y. 2016-17 on protective basis to be taxed at the rates prescribed u/s 115BBE of the Income-tax Act, 1961. Since the assessee has concealed particulars of income penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961, is initiated. "

Further, in Para 5(c) of assessment-order, the AO has also made a vital observation as under:

"(d) The assessee has stated that the opening cash balance as on 01.04.2014 is Rs. 15,00,909/-. However, it is noticed that the assessee has not filed his return for FY 2013-14 i.e. A.Y. 2014-15 and hence the opening balance of the assessee as on 01.04.2014 is not verifiable and not accepted. Further opening cash balance as on 01.04.2015 is only Rs. 55,688/-, while the closing balance as on 31.03.2016 is Rs. 2,53,76,118/- which is approx.. 455 times of the closing balance as on 31.03.2015. Thus there is abrupt jump in the cash balance and cash sales which the assessee has failed to justify with supporting documents"

6. The above notings demonstrate that the AO has firstly made an addition, although protective, in AY 2016-17 (immediately preceding year) for the reason that he came to form a view, based on considerations of abnormality in cash-balance and assessee's attitude of filing return very belatedly, that the assessee inflated cash balance on 31.03.2016 to accommodate deposits in demonetized currency in next year. Secondly, the

AO also re-opened assessment of AY 2017-18 (current assessment-year under consideration) which ultimately culminated in an addition of Rs. 13,81,800/- in the nature of substantial addition.

7. However, during hearing before us, there is no submission from assessee's side qua the status of AY 2016-17. Ld. AR for assessee has merely argued case on the basis of analysis of data related to financial year 2016-17 relevant to AY 2017-18 whereas the issue basically originates from AY 2016-17. Further, in his submissions, Ld. AR has presented a broad picture of overall sales and cash-deposits in bank a/c made by assessee during the financial year 2016-17 which does not specifically resolve the exact controversy as to what was immediate source of the deposit of demonetized currency by assessee. In any case, it is also a question whether the addition, if any, would finally hold good in AY 2016-17 or 2017-18. Further, the CIT(A) has passed the impugned order deciding the first-appeal of AY 2017-18 without making any whisper about the status of AY 2016-17. Therefore, it remains an unanswered question as to what is status of AY 2016-17. We feel that there is a strong necessity to have a conjoint adjudication in both AY 2016-17 and 2017-18 if there is any appeal of AY 2016-17 filed by assessee which in all probability must have been filed. Being so, we think it most appropriate to remand this matter back to the file of CIT(A) who shall be adjudicate afresh the case of AY 2017-18 alongwith appeal of AY 2016-17, if any filed by assessee. Needless to mention that the CIT(A) shall make an overall adjudication from all angles. The assessee is

also directed to present full picture before CIT(A) so that there does not remain any ambiguity leading to unnecessary rounds of litigation. Consequently, this appeal is remanded to CIT(A).

8. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 15.02.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 15.02.2024.
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore