

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री मंजूनाथा. जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND  
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.769/Chny/2020  
निर्धारण वर्ष/Assessment Year: 2017-18

The Joint Commissioner- of Income Tax (OSD), Circle-2(1), Tiruchirapalli.  [PAN: AAGFG 9212 L] (अपीलार्थी/Appellant)	v.	M/s.G.K.Dairy, No.1/12, Main Road, Kurichi, Thiruvaidaimarudur-612 504.  (प्रत्यर्थी/Respondent)
Department by	:	Shri Nilay Baran Som, CIT
Assessee by	:	Shri S.Sridhar, Advocate
सुनवाई की तारीख/Date of Hearing	:	02.01.2024
घोषणा की तारीख /Date of Pronouncement	:	21.02.2024

**आदेश / ORDER**

**PER MANJUNATHA.G, AM:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Trichy, dated 17.06.2020, and pertains to assessment year 2017-18.

**2. The Revenue has raised the following grounds of appeal:**

1. The order of the learned Commissioner of Income tax (Appeals), Trichy is contrary to the law, facts and circumstances of the case.

2. The CIT(A) erred in allowing #f stock loss of Rs.83,94,833/- against the unexplained cash deposits of Rs.1,10,30,000/- without appreciating the facts that cash book submitted

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*during the course of investigation failed to explain the source of cash deposits made by the assessee firm in SBNs after 24/11/2016,*

*3. The CIT(A) failed to note that during the course of sworn statement recorded u/s.131(1A) of the Act the partner of the assessee firm confirmed that cash in demonetized currency was not accepted after 23/11/2016, hence the cash deposits made afterwards in SBNs cannot be said to have received from sale of milk.*

*4. The CIT(A) erred in deleting the addition of Rs.5,54,94,690/- holding that cash deposit of Rs.5,54,94.690/- made out of cash sales in normal course of business without appreciating the facts that the assessee has not submitted any books of account during the course of assessment proceedings.*

*5. The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.*

**3.** At the outset, we find that there is a delay of 15 days in filing of the appeal, for which, an affidavit has been filed explaining the reasons for delay in filing of the appeal. The Ld.DR referring to affidavit filed by the AO submitted that due to Covid situation then prevailing at that time the appellate order was received by the AO, because of disturbance in the regular functioning of the Office, appeal could not be filed. Therefore, he submitted that the delay in filing of the appeal should be condoned. The Ld.Counsel for the assessee fairly agreed that the delay in filing of the appeal may be condoned.

**3.1** Having heard both the sides and considering reasons given by the AO in Affidavit filed for condonation of delay, we are of the considered view that the reasons given by the Revenue for not filing the appeal within the time allowed under the Act comes under reasonable cause, and thus, the delay in filing of the appeal is condoned and appeal filed by the Revenue is admitted for hearing.

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**4.** The brief facts of the case are that the assessee is a firm doing diary business dealing in purchase and sale of milk. The assessee's firm filed its return of income for AY 2017-18 on 06.11.2017 declaring total income of Rs.1,98,55,779/-. The case was selected for scrutiny under CASS to verify large value of cash deposits during demonetization period. It was seen from the records that information was received from the ADIT (Investigation), Trichy, pertaining to cash deposits made during demonetization period in the name of the assessee's firm. Further, bank account statements in the name of the assessee were obtained from the bank and noticed that the assessee has made cash deposits into bank account between 08.11.2016 and 31.12.2016, amounting to Rs.6,65,24,690/- which includes a sum of Rs.1,51,35,500/- in old demonetized currency notes. Sworn statement from the Cashier and the Manager of the assessee's firm were recorded u/s.131(1A) of the Income Tax Act (in short "the Act") on 09.03.2018, and in response, Cashier, Shri C.Prabhu stated that the firm has accepted demonetized currency from 09.11.2016 to 23.11.2016 and after 23.11.2016, demonetized currency was not accepted. The statement of Shri C.Prabhu was confirmed by Shri K.Poori Jaganathan.

**5.** During the course of assessment proceedings, the AO examined the cashbook, bank account statements of the assessee's firm and noticed that the assessee was not having opening cash in hand in demonetized currency as on 08.11.2016 in respect of cash deposits of

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Rs.1,10,30,000/-. In respect of remaining cash deposits, the assessee has filed cashbook, sales and purchase details and argued that the remaining cash deposits after 08.11.2016 is in new currency notes and the same is received against sales made and declared in the books of accounts of the assessee. The AO, however, was not satisfied with the explanation furnished by the assessee and according to the AO, the assessee could not explain known source of income in respect of cash deposits into bank account in old demonetized currency notes amounting to Rs.1,10,30,000/-. The AO further noted that although, the assessee produced cash book in respect of balance cash deposits, but there is a variation in cash balance as per statement of the Cashier, Shri C.Prabhu, and cash book furnished by the assessee. Therefore, rejected cash book filed by the assessee and treated entire cash deposits to the tune of Rs.6,65,24,690/- deposited during demonetization period as unexplained money and brought to tax u/s.69A r.w.s.115BBE of the Act.

**6.** Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue which has been extracted in Para No.6 on Page Nos.5 to 22 of the order of the Ld.CIT(A). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that when the report of the ADIT (Investigation), Trichy, itself shows cash deposits of Rs.1,10,30,000/- in demonetized currency from 08.11.2016 to 23.11.2016, the AO erred in making additions towards total cash deposits

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of Rs.6,65,24,690/-. The assessee further contended that source for cash deposits after 23.11.2016 is cash sales made and accounted in the books of accounts, and thus, the same cannot be treated as unexplained money. The assessee further contended that the AO even cannot make additions towards demonetized currency deposited into bank account u/s.69A r.w.s.115BBE of the Act, because, the product transacted by the assessee is highly perishable in nature and further, the assessee was allowed to collect cash up to 23.11.2016.

**7.** The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of relevant reasons given by the AO to make additions towards cash deposits u/s.69A r.w.s.115BBE of the Act, sustained additions made by the AO to the tune of Rs.1,10,30,000/- being cash deposits into bank account in demonetized currency notes from 09.11.2016 to 23.11.2016 u/s.69A r.w.s.115BBE of the Act. In so far as balance cash deposits of Rs.5,54,94,960/-, the Ld.CIT(A) deleted the additions made by the AO on the ground that there is no reason for the AO to add back said cash deposits, because, the assessee has explained source for cash deposits and also declared sales in the books of accounts for relevant assessment year. Further, the Ld.CIT(A) has computed income declared by the assessee by reducing the cost of goods pertains to sales declared by the assessee in respect of cash deposits of Rs.1,10,30,000/- by considering gross profit @ 23.89% on total sales and worked out cost of sales at Rs.83,94,933/-. Since, the assessee has

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already declared sales towards cash deposits of Rs.1,10,30,000/- and also paid tax on profit element, the Ld.CIT(A) directed the AO to re-compute income returned by the assessee after excluding stock loss of Rs.83,94,933/- from the returned income of Rs.1,98,55,779/-. To sum up, the Ld.CIT(A) recomputed income from business and profession declared by the assessee at Rs.1,14,60,846/- under normal provisions of the Act and sustained additions made by the AO towards cash deposits in demonetized currency amounting to Rs.1,10,30,000/- u/s.69A r.w.s.115BBE of the Act. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us.

**8.** The Ld.CIT-DR, Shri Nilay Baran Som, submitted that the Ld.CIT(A) erred in allowing stock loss of Rs.83,94,933/- against unexplained cash deposits of Rs.1,10,30,000/- without appreciating the facts that, cash book submitted during the course of investigation failed to explain the source for cash deposits made by the assessee's firm in Specified Bank Notes (in short "SBNs") after 24.11.2016. The Ld.CIT-DR further submitted that the Ld.CIT(A) failed to note that during the course of sworn statement recorded from the partner of the assessee's firm, he has confirmed cash deposits in demonetized currency, and thus, there is no reasons for the Ld.CIT(A) to allow relief to the assessee towards stock loss. The Ld.DR further submitted that the Ld.CIT(A) erred in deleting the addition of Rs.5,54,94,960/- by holding that source for said cash deposits is out of cash sales under normal course of business, even though, the

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assessee has not submitted any books of accounts during the course of assessment proceedings, Therefore, he submitted that the order of the Ld.CIT(A) should be reversed and additions made by the AO towards total cash deposits u/s.69A r.w.s.115BBE of the Act, should be sustained.

**9.** The Ld.Counsel for the assessee, Shri S. Sridhar, Advocate, supporting the order of the Ld.CIT(A) submitted that, the First Appellate Authority has deleted an amount of Rs.5,54,94,690/- being the cash deposits to bank other than SBNs, because, there is no prohibition under the Act to accept cash against sales and deposit into bank account. The Ld.Counsel for the assessee further submitted that the assessee has submitted all evidences including cash book, sales bill and other evidences to prove sales affected in cash during the period of demonetization. The assessee had also declared sales in the books of accounts and paid necessary taxes. Therefore, the question of making addition towards cash deposits merely on the basis of statement of Cashier, is not correct. The Ld.Counsel for the assessee further referring to petition filed by the assessee under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963, submitted that the Ld.CIT(A) erred in sustaining addition to the extent of Rs.1,10,30,000/- u/s.69A r.w.s.115BBE of the Act, without appreciating the fact that when the source for cash deposits has been explained out of known source of income, then, the question of making additions towards cash deposits u/s.69A of the Act, does not arise. Therefore, he submitted that additions

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sustained by the Ld.CIT(A) to the tune of Rs.1,10,30,000/- u/s.69A r.w.s.115BBE of the Act, should be deleted.

**10.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The sole basis for the AO to make addition towards cash deposits into bank account during demonetization period amounting to Rs.6,65,24,690/- is a report received from the ADIT (Investigation), Trichy. The ADIT (Investigation), Trichy, sent a report to the AO pertaining to cash deposits made during demonetization period in the name of the assessee's firm. As per said Report, the assessee has made total cash deposits of Rs.6,65,24,690/- between 08.11.2016 and 31.12.2016, which includes a sum of Rs.1,51,35,500/- in old demonetized currency notes. A sworn statement u/s131(1A) of the Act, has been recorded from Cashier, Shri C.Prabhu, where, he has admitted that the firm has accepted demonetized currency from 08.11.2016 to 23.11.2016 and after 23.11.2016, cash sales have been made only against new currency notes. The AO has made additions towards total cash deposits, including cash deposits in new currency notes on the ground that the cash book submitted by the assessee during the course of assessment proceedings is not reliable, because, as per cash book submitted by the assessee, the opening cash balance was shown at Rs.1,69,29,437/-, whereas, cash in hand as per cash book during survey proceedings was shown at Rs.10,75,464/-. Except this reason, the AO has not given any other valid reason for not rejecting the books of

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accounts, including cash book submitted by the assessee. Therefore, it is necessary to decide the issue of cash deposits during demonetization period in light of reasons given by the Ld.CIT(A) to partly sustain the additions made u/s.69A of the Act, and deleting the balance addition towards cash deposits in new currency notes.

**11.** Admittedly, out of total cash deposits, a sum of Rs.1,51,35,500/- is in old currency notes. The assessee could not explain source of income for cash deposits of Rs.1,10,30,000/- between 08.11.2016 and 31.12.2016 in old currency notes. In fact, the AO has allowed credit to the extent of opening cash in hand available with the assessee in old currency notes. Since, the assessee could not establish source for cash deposits in old currency notes to the tune of Rs.1,10,30,000/-, in our considered view, there is no error in the reasons given by the Ld.CIT(A) to sustain the additions made by the AO u/s.69A r.w.s.115BBE of the Act. Although the assessee has filed petition under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963, in light of certain judicial precedents and sought for deletion of additions sustained by the Assessing Officer, in our considered view, when the assessee is not able to establish availability of cash in hand in old currency notes as on 08.11.2016, then the question of treating said cash deposits as normal business receipts is incorrect. Therefore, we are inclined to uphold the findings of the Ld.CIT(A) and reject petition filed by the assessee under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963.

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**12.** Coming to deletion of balance cash deposits of Rs.5,54,94,690/- and re-computation of income declared by the assessee in the return of income filed for the impugned assessment year. The Ld.CIT(A) has deleted the balance cash deposits Rs.5,54,94,690/- on the ground that the source for cash deposits between 08.11.2016 and 31.12.2016 is out of sale proceeds in cash and further, said cash deposits was made in new currency notes. Further, when the assessee's nature of business is dealing in milk and further, the major portion of sales and purchase of the assessee is in cash, in our considered view, unless the AO points out any defects in the books of accounts maintained by the assessee or abnormal deviation in total sales, cash sales and cash deposits during demonetization period when compared to corresponding period in the previous year, no additions can be made towards cash deposits u/s.69A r.w.s.115BBE of the Act. Since, the assessee could able to furnish necessary evidences, including cash book, sales bills and also explained source for cash deposits into bank account in new currency notes, in our considered view, the AO is completely erred in making addition towards balance cash deposits of Rs.5,54,94,690/- u/s.69A of the Act. We further noted that the sole basis for the AO to reject cash book filed by the assessee during the course of assessment proceedings, is difference in opening cash in hand as on 27.11.2016 in the cash book maintained by the Cashier, Shri C.Prabhu and cash book submitted by the assessee during the course of assessment proceedings. The assessee has

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explained difference in cash balance between two cash books and argued that cash book considered by the Survey Team on 27.11.2016, is a rough cash book maintained by the Cashier at Factory premise, whereas, the cash book submitted by the assessee, is a computer generated cash book which contain total transactions of the assessee. In our considered view, the explanation given by the assessee to explain difference in cash balance as per two cash books is reasonable and acceptable. Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to delete addition made towards balance cash deposits of Rs.5,54,94,690/- and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

**13.** Having said so, let us come back to estimation of returned income. The assessee has declared income from business and profession at Rs.1,98,55,779/- which includes profit margin of the assessee in respect of cash deposits into bank account in demonetized currency notes amounting to of Rs.1,10,30,000/-. The AO has made additions towards total cash deposits including cash deposits in demonetized currency amounting to Rs.1,10,30,000/-. The assessee claimed before the Ld.CIT(A) that since it has already accounted sales in the books of accounts in respect of cash deposits of Rs.1,10,30,000/-, corresponding purchases cost of sales in respect of said sales needs to be excluded from the net profit declared by the assessee. The Ld.CIT(A) has worked out cost of sales in respect of sales declared by the assessee to the tune of

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Rs.1,10,30,000/- by taking into account gross profit shown by the assessee at 23.89% and worked out cost of sales at Rs.83,94,833/- in respect of sales accounted to the tune of Rs.1,10,30,000/-. Since, the sales declared by the assessee to the tune of Rs.1,10,30,000/- has been excluded and made additions under the head 'income from other sources' as unexplained money u/s.69A of the Act, in our considered view, the cost of purchase to said sales also needs to be excluded. If you exclude sales and corresponding cost of sales from the net profit declared by the assessee, the net profit computed by the Ld.CIT(A) by excluding a sum of Rs.83,94,933/- from net profit declared by the assessee at Rs.1,98,55,779/-, in our considered view, the net profit computed by the Ld.CIT(A) at Rs.1,14,60,846/- is in accordance with accepted principles of accounting. Therefore, we are of the considered view that there is no error in the findings recorded by the Ld.CIT(A) to re-compute net profit from business and to be taxable under normal rate of tax, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the Revenue.

**14.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 21<sup>st</sup> day of February, 2024, in Chennai.

**Sd/-**  
**(महावीर सिंह)**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष/VICE PRESIDENT**

**Sd/-**  
**(मंजूनाथा. जी)**  
**(MANJUNATHA.G)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

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चेन्नई/Chennai,  
दिनांक/Dated: 21<sup>st</sup> February, 2024.  
**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|--------------------------|-------------------------|------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त/CIT      | 5. गार्ड फाईल/GF |
| 2. प्रत्यर्थी/Respondent | 4. विभागीय प्रतिनिधि/DR |                  |