

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2815/Mum/2023
(Assessment Year: 2017-18)**

Pukhraj Nathmal Jain 3 rd Floor, Bapubhai Vashi Road, Vile Parle West, Mumbai – 400 056 PAN : ACZPJ9215D	Vs.	Income Tax Officer 25(3)(2) Kautilya Bhavan, BKC,0 Bandra East, Mumbai – 400 051
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Vimal Punmiya
Revenue/Respondent by : Dr. Yogendra T. Wakare

Date of Hearing : 21.02.2024
Date of Pronouncement : 26.02.2024

ORDER

Per Padmavathy S, AM:

1. This appeal of the Assessee is against the order of the Commissioner of Income Tax (Appeals) / NFAC [for short 'the CIT(A)] dated 28.7.2022 for AY 2017-18.

2. The Assessee raised the following grounds of appeal:

1. On the facts and circumstances of case and In law the Ld CIT(A) erred in adding of Rs.33,84,000/-as undisclosed income under section 69A and or under section 68 as mentioned in assessment order.

2. On the facts and circumstances of case and in law the Ld CIT(A) erred in charging interest u / s 234B of Income Tax Act 1961.

3. *On the facts and circumstances of case and in law the Ld CIT(A) erred in initiating penalty u / s 271AAC of Income Tax Act 1961.*

4. *The assessee carves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

3. The Assessee is engaged in the business of whole sale and retail trading of cloth. The year under consideration, the Assessee has declared an income of Rs.3,31,710/- by filing the return of income on 1.7.2017. The case was selected for scrutiny under CASS and the statutory notices were duly served on the Assessee. During the course of assessment the AO noticed that the Assessee has deposited a sum of Rs.39,34,000/- in the bank account maintained with Axis Bank during the demonetization period in Specified Bank Notes (SBN). The AO called on the Assessee to provide the source of cash deposits with necessary documentary evidences. The Assessee submitted the details of cash in hand, cash sales, cash withdrawn from bank account, stock register and sample purchase bills as documentary evidences. The AO after perusing the details filed by the Assessee held that:

“6. *Having regard to the above and considering the assessee's submission, the total income of the assessee is being assessed subject to the following discussion.*

ANALYSIS OF CASH ENTRIES APPEARING DURING F Y 2016-17

- *Cash deposit in Banks during F.Y 2015-16 and 2016-17as under:*

<i>CASH DEPOSITS DURING FY 2015-16</i>	▪ <i>Rs. 11,55,000</i>
<i>CASH DEPOSITS DURING FY 2016-17</i>	▪ <i>Rs. 47,17,520</i>
<i>CASH DEPOSITS DURING 08/11/2015 to 31/12/2015</i>	▪ <i>Rs. 1,25,000</i>
<i>CASH DEPOSITS DURING 08/11/2016 to 31/12/2016</i>	▪ <i>Rs. 39,34,000</i>
<i>CASH SALES DURING F.Y 2015-16</i>	▪ <i>Rs. 5,73,242</i>
<i>CASH SALES DURING F.Y 2016-17</i>	▪ <i>Rs. 26,38,241</i>

There is wide variation between the cash deposits made in the bank account during the demonetisation period and cash deposits made during the same period in the immediately preceding financial year i.e. F.Y. 2015-16.

- *If the assessee was in possession of such large amount on account of sale proceeds and large withdrawal from bank, as to why it was not deposited in the bank one instalment.*
- *If the assessee have sufficient amount cash in hand and withdrawal from bank, why assessee again and again cash withdrawal from Banks. Means the earlier amount expand by assessee than again withdrawal from Banks.*
- *It is seen from financial year 2015-16, the assessee has cash balance was Rs 53,44,882/- and the cash on hand as on 31/03/2016 was only Rs 48795/-. During the year under consideration the assessee have shown cash balance at Rs 33,40,327/- as on 09/11/2016. The cash deposited by the assessee during the demonetisation is to the tune of Rs 39,34,000/-, This indicates that the cash withdrawal made prior to the demonetisation period and amount received on cash sales made has not been utilised for expenses, It is common sense that people withdraw money from the bank to meet expenses. Therefore, submission made by the assessee that the cash withdrawn from the bank and consideration on cash sales have not been utilised for expenses is something hard to believe. Therefore, the source of cash deposit of Rs. 39,34,000/- made by assessee has remained unexplained.*
- *It is apparent that the cash deposits made in the bank accounts during F.Y 2016-17 relevant to AY 2017-18, especially during demonetization period, are unexplained and from undisclosed sources, which has not been offered by the assessee for taxation purposes.*
- *Where the assessee was unable to prove that in his normal business or otherwise, he was possessed of so much cash, it was held that the assessee started under a cloud and must dispel that cloud to the reasonable satisfaction of the assessing authorities to hold that the amount represented income from some undisclosed source.*

7. *In this case as per the information available, during the previous year relevant to the A.Y. 2017-18, the assessee has made cash deposits aggregating to Rs. 39,34,000/- On perusal of Bank statement it is seen that the assessee has withdrawn of Rs 4,50,000/- & Rs.1,00,000/- from his Bank account on 05/11/2016 & 08/11/2016 respectively. Hence this amount considered as explained and balance of Rs 33,84,000/- treated as unexplained money.*

4. Aggrieved, the Assessee filed further appeal before the CIT(A) who upheld the order of the CIT(A). Aggrieved the Assessee is in appeal before the Tribunal.

5. The learned Authorised Representative (the Ld. AR) submitted that the Assessee is engaged in the business of wholesale as well as retail trading in cloth and in retail trading the Assessee does cash sales. The Ld. AR submitted that the AO has not disputed the sales figure of the Assessee and has not rejected the books of accounts of the Assessee. Given this the AO making addition towards cash deposits which is generated from cash sales would result in double addition. The Ld. AR drew our attention to the various details in the form of cash book, stock statement, sales register and purchase register submitted before the AO (page 14 to 59 of paper book) to submit that the AO did not record any adverse finding with regard to the various documentary evidences submitted by the Assessee in support of the source of cash but has proceeded to make the addition simply stating that no prudent business man would hold cash for such a substantial amount. The Ld. AR also submitted that working explaining the details of the cash deposited during the demonetization period.

6. The Ld. DR on the other hand relied on the orders of the lower authorities.

7. We heard the parties and perused the material on records. The assessee has deposited Rs 39,34,000/- of SBN during the demonetisation period. We notice that the assessee has submitted cash book, sales account, purchases account, stock statement, Bank statement etc., before the lower authorities for AY 2016-17, AY 2017-18 and AY 2018-19 to substantiate that the cash deposit is from the cash generated out of business. The assessee has also submitted details of cash sales, receipts from debtors and cash withdrawals etc.(page 14 to 16 of paper book) for AY 2016-17, AY 2017-18 and AY 2018-19 in support of the claim the source for deposit of Rs 39,34,000/- is from cash sales, withdrawals from bank and receipts

from parties. With regard to the contention of the AO that the assessee has not accounted for any expenses the Id AR drew our attention to the above summary to submit that the surplus cash is being spent towards business expenses. Besides the above the assessee has also furnished details pertaining to parties of purchases and sales above Rs.50,000 along with bills.

8. The AO and the CIT(A) have not recorded any adverse finding with regard to the various details furnished by the assessee before them and that the AO himself has recorded the finding from the verification of cash book that the cash balance as on 09/11/2016 was Rs 33,40,327/-. The addition is made for the deposit of SBN during demonetization period on the ground that there is no reason for assessee to hold such huge cash and that the assessee ought to have incurred expenses in cash. The amount of sales which is not disputed is already offered to tax by the assessee by reflecting the same in the trading / P&L Account which fact is not doubted by the lower authorities and that the AO/CIT(A) have accepted the income offered by the assessee under the head Profits and Gains from Business or Profession. In that case, if the cash deposits are added under section 68 of the Act, then it would result in taxing the impugned amount twice, once as a sales income and secondly as an addition under section 68 of the Act. Further the addition under section 68 of the Act is contradictory to the stand taken while accepting the business income offered to tax by the assessee.

9. We notice that the coordinate bench of the Tribunal in the case of ITO vs Swarnsarita Jewellers (I.T.A. No.1420/Mum/2023 dated 23.08.2023) has considered a similar issue and held that –

10. In view of the above facts therefore, according to us, the Ld. CIT(A) had rightly held that, when the sale proceeds of Rs.98 lacs had been supported with book

results & primary evidences, which were not disproved by the AO, and that the same had already been assessed by the AO as revenue receipts from 'Business', then it was wholly improper for the AO to again tax these sale proceeds as unexplained cash credit u/s 68 of the Act, as it would amount double taxation of the same sum. The reliance placed by the Ld. AR in support thereof on the following decisions are found to be relevant.

a. CIT Vs Vishal Export Overseas Ltd [TA No. 2471 of 2009] (Guj HC)

“5. The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had already offered sales realisation and such income is accepted by the Assessing Officer to be the income of the assessee, addition of the same amount once again under section 68 of the Act would tantamount to double taxation of the same income.

6. Having heard learned counsel for the parties and having perused the documents on record, we are in agreement with the above view of the Tribunal.”

b. CIT Vs Kailash Jewellery House [TA No. 613/2010] (Del HC)

“The Tribunal also observed that it is not in dispute that the sum of Rs 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are ITA No.1420/Mum/2023 A.Y. 2017-18 Swarnasarita Jewellers 10 purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration.”

11. Following the above decisions, it is noted that similar view has been expressed by the coordinate Bench of this Tribunal in the case of DCIT Vs Kundan Jewellers Pvt Ltd [ITA No. 1035/Mum/2022] dated 29.05.2023. The relevant findings are noted to be as under:-

“4. The CIT(A) has considered the details of sales, the stock register and the turnover is consistently maintained. The assessee has submitted the details of cash sales/receipts and party wise details of sales above Rs.2 lakhs and when a query was raised to Ld.AR on submissions of details were the cash sales are below Rs.2 Lakhs. The Ld.AR mentioned that the assessee has submitted details of sales below Rs2 lakhs and highlighted rule 114B of the I T Rules r.w.s139(a)(5)(c) of the Act and there was no KYC required. Further the Ld.AR demonstrated the sample Tax Invoice below Rs.2 lakhs in the demonetization period and the invoice contains, name and address etc. Further there is no significant increase in the cash sales out of total sales, whereas for F.Y.2016-17

it is @ 31.27% and in comparison to F.Y. 2015-16 @ 31.44%, the Ld.AR referred to the cash flow statement, cash book and demonstrated the details of deposits made out of the cash sales and the assessee has been consistently maintaining the stock of Rs.68.07 crs for the F.Y 2015-16 and for F.Y 2016-17 it was maintained at Rs.65.38crs and the cash sales are part of the stocks maintained which is not disputed. Further the addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the cash sales proceeds/receipts received from ITA No.1420/Mum/2023 A.Y. 2017-18 Swarnasarita Jewellers 11 the customers are reflected in the Audited Profit & Loss account as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. The AO has not pointed out any specific adversity but made a generalize addition without considering the factual aspects and primary evidences. The A.O has failed to make further enquiries on the information filed and the assessee has discharged the initial burden placed by submitting the information and details. We find the CIT(A) has dealt on the facts, provisions of law, notes and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take different view. We considered the facts, circumstances, submissions and ratio of judicial decisions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.”

12. For the reasons discussed above and in light of the above decisions (supra), we see no reason to interfere with the order of the Ld. CIT(A). Accordingly, the order of the Ld. CIT(A) is upheld and all the grounds raised by the Revenue are dismissed.

10. Considering the facts of the present case and applying the ratio of the above decision of the coordinate bench we are of the view that the assessee has discharged the onus of substantiating the source for the deposits made in SBN during demonetisation period and that the addition made by the revenue without disputing the business income of the assessee is not tenable. In view of the above discussion, we are of the considered view that the addition of Rs 33,40,327/- made under section 68 of the Act cannot be sustained and is therefore deleted.

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

Order pronounced in the open court on 26-02-2024.

Sd/-
(ABY T VARKEY)
Judicial Member

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Mumbai, Dated : 26.02.2024

Mini Pawar, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai