

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1128/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Razak Mankadavath Puthanveetil 10, Mankadavath Puthenveetil House, Krishna Street, Erode-638 003.	बनाम/ Vs.	ACIT Circle-2 Erode.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. ALUPR-2714-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate- Erode)-Ld. AR (Present virtually)
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT)- Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	20-02-2024
घोषणाकी तारीख / Date of Pronouncement	:	28-02-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 17-08-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 26-12-2019. The grounds taken by the assessee are as under:

1. The order of the learned First Appellate Authority is bad and erroneous in law.
2. The learned First Appellate Authority erred in not considering the submissions filed by the appellant in proper perspective.

3. The learned First Appellate Authority erred in not considering the material fact that the book results have not been rejected.

4. The learned First Appellate Authority erred in not considering the fact that the appellant's omission to file the VAT returns, etc. were not intentional, since the same were never called for during the assessment proceedings nor during the appellate proceedings.

5. The learned First Appellate Authority erred in not considering the fact that the addition made by the Assessing Officer u/s. 69A of the IT Act amounting to Rs.1,51,56,000/- requires deletion, for the fact that the section shall be applicable ONLY when the sum is NOT found to be recorded in the books of accounts maintained by the appellant.

2. The Ld. AR advanced arguments supporting the case of the assessee and submitted that sales turnover has not been disputed by Ld. AO. The Ld. Sr. DR, on the other hand, referred to the findings of Ld. AO, to support the case of the revenue. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under. The assessee being resident individual is stated to be engaged in wholesale purchase and sale of footwear articles.

Assessment Proceedings

3.1 The assessee was subjected to scrutiny assessment to verify cash deposited by him during demonetization period. It transpired that assessee deposited cash of Rs.202.01 Lacs in four bank accounts as tabulated in para 3 of the assessment order. Accordingly, the assessee was directed to substantiate the same.

3.2 The assessee submitted that he was engaged in purchase and sale of footwear. The customers / buyers were ranging from town to villages. To collect cash from them, 5 to 6 persons were engaged who would collect cash from them in small amounts and collectively deposit the same in banks then and there. The assessee achieved turnover of Rs.44.46 Crores. Considering the nature of business, the deposit of cash was reasonable and genuine.

3.3 The monthly sales data and cash deposited by the assessee was tabulated by Ld. AO as under:-

Month	Sales	Cash deposit	% of cash deposits to sales
Apr-16	408,64,218	337,26,050	82.53%
May -16	392,50,017	389,34,850	99.20%
Jun-16	482,63,130	496,53,397	102.88%
Jul-16	395,19,226	409,65,800	103.66%
Aug-16	368,92,788	291,85,900	79.11%
Sep-16	289,28,945	304,58,090	105.29%
Oct-16	933,78,390	401,89,534	43.04%
Nov-16	151,75,407	299,05,750	197.07%
Dec-16	95,62,529	125,48,333	131.22%
Jan-17	264,32,573	240,57,100	91.02%
Feb-17	344,09,337	278,61,750	80.97%
Mar-17	319,70,406	304,29,022	95.18%

3.4 On the basis of above data, Ld. AO observed that sale for the month of October, 2016 was abnormally high. Showing this abnormal sale in month immediately preceding the month in which demonetization took place, raise suspicion over the genuineness of this amount. The pattern of cash deposit would show usual business practice is to deposit 80-100% of sale proceeds into the bank account in the same month itself whereas in October, the cash deposited was only 43% of the sales of the month which further raises the question over the genuineness of the sales reported in October, 2016. The inflated sales in the month of October, 2016 seem to have been used as a device to accommodate deposit of unaccounted cash during the time of demonetization. Finally, out of total cash deposited during the period of demonetization, amount to the extent of Specified Bank Notes (SBN) deposited during the same period was added to total income as undisclosed money in the hands of the assessee.

Appellate Proceedings

4.1 The assessee assailed invocation of Sec.69A for such cash deposits since the said cash was duly recorded in the books of accounts. The books were subjected to Tax Audit u/s 44AB. The Ld. AO did not make any adverse remark on the books of accounts. Therefore, these provisions could not be pressed into service to make the impugned additions.

4.2 The assessee also submitted that total turnover was Rs.44.46 Crores which was duly supported by financial statements, month-wise sale register, bank statements etc. The turnover was much more than the total cash deposited in the bank account.

4.3 However, Ld. CIT(A) observed that the assessee could not establish that the source of such deposit was the sales receipts. This amount was received in cash and there was no third-party evidence to justify his claim. The basic relevant information e.g. monthly sales summary, relevant stock register entries, cash book, purchase ledger, purchase bills and sales invoices could not be co-related with the cash receipts from the sales affected by the assessee. Since, there was abnormal jump in percentage of cash sales declared by the assessee in the month of October, 2016, there remain doubts of fictitious sales. The assessee failed to discharge his burden to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash. Further, it could contrarily be considered that the case of the assessee falls into statistical analysis which suggests that there is booking of sales which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped as unaccounted money.

Such exorbitant deposits failed to go in tune with the volume of appellant's normal course of business. It could be construed that the assessee failed to offer its explanation regarding the source of the cash deposited during demonetization. The assessee has not been able to justify his sales with the cash book, purchase ledger, purchase bills and sales invoices. Therefore, it could not be held that the alleged sales were part of total turnover of the assessee. Therefore, the provisions of Sec.69A were rightly invoked and the additions were confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee is engaged in wholesale trading of footwear. The turnover of the assessee is credit sales as well as cash sales. The assessee carries out sales through branches and its customers are located at small towns / villages. To collect cash from its customers, the assessee has deputed 5 to 6 persons who would collect cash in small amounts and collectively deposit the same in banks then and there. The assessee has achieved turnover of Rs.44.46 Crores. The books of accounts are duly audited u/s 44AB. No defect has been pointed out by Ld. AO in the books of accounts and financial results have been accepted. The books of accounts are duly supported by financial statements and monthly sales register as filed by the assessee during the course of assessment proceedings.

6. The observations of Ld. AO are that sale during the month of October, 2016 was abnormally high which was nothing but to accommodate deposit of unaccounted cash during the time of

demonetization. However, there is no fact base finding as to how the sales were not genuine. Merely because the sales were high in this month could not lead to formation of such a conclusion especially when the sales turnover was found duly reflected in assessee's books of accounts. The sales were duly supported by monthly sales register. It is trite law no addition could be made on mere suspicion, conjectures or surmises. It could also be seen that cash has been generated out of sales turnover. The cash generated by the assessee arise out of same set of sale transaction, a part of which has been accepted by Ld. AO. The Ld. AO has segregated SBN and non-SBN cash deposits and made disallowance of cash deposits in SBN. In other words, the cash generated in non-SBN has been accepted to be genuine sales whereas cash generated in SBN has been accepted to non-genuine sales. This conclusion is clearly fallacious since a particular customer may pay in combination of SBN as well as non-SBN. Therefore, accepting a part of the transaction and rejecting the other part could not be held to be justified, in any manner. When the assessee had furnished all the documentary evidences in support of its financial transactions then in such a case, in our considered opinion, the burden was on revenue to controvert the stand of the assessee. In the absence of such an exercise, the impugned additions have no legs to stand. By deleting the same, we allow the appeal of the assessee.

7. The appeal stand allowed in terms of our above order.

Order pronounced on 28th February, 2024

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 28-02-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF