

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA
BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1175/Kol/2023
Assessment Year: 2017-18**

Shusheel Kumar Agarwal C/o Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2 nd floor, Kolkata-700069. (PAN: ACIPA1985G)	Vs.	ACIT, Circle-36, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Agarwal, Advocate
Respondent by : Shri Altaf Hossain, Addl. CIT

Date of Hearing : 10.01.2024
Date of Pronouncement : 29.02.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1056048428(1) dated 13.09.2023 passed against the assessment order by ACIT, Circle-36, Kolkata u/s.144 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 20.12.2019 for AY 2017-18.

2. Grounds raised by the assessee are reproduced as under:

1. For that the Ld. CIT(A) was not justified in confirming the action of the A.O. in rejecting the books of accounts.

2. For that the Ld. CIT(A) ought to have quashed the assessment proceedings since the assessment was completed by the non jurisdictional Assessing Officer.

3. For that the Ld. CIT(A) was not justified in confirming the addition of Rs.1,51,76,477/- made by the A.O. being cash deposits by the assessee

during the course of demonetization period by invoking the provisions of sec. 68 of the Act.”

3. Brief facts of the case are that assessee filed his return of income on 30.10.2017 reporting total income at Rs.43,76,780/-. Assessee is engaged in the business of trading in electrical and electronic goods. Case of the assessee was selected for scrutiny for the reason of cash deposit in demonetization period. From the verification of documents submitted by the assessee, ld. AO noted that an amount of Rs.1,52,10,000/- was deposited in the bank account during demonetization period which has been passed through the cash book. Ld. AO called for explanation in this respect. Ld. AO noted that assessee has produced bank book and bank accounts on whose examination he noted certain discrepancies which are listed as under:

- (i) There has been negative balance, although there was no cash on a particular date, but cash were being deposited in the bank account on the very date.
- (ii) Date wise sale entry was made below Rs.20,000/- for which no supporting documents can be produced.

3.1. Ld. AO thus inferred that cash book maintained by the assessee is manipulated and, therefore, the books of accounts produced by the assessee are not satisfactory. A show cause notice was issued as to why the books of accounts should not be rejected u/s. 145(3) of the Act. Against this, assessee submitted that while arranging cash book from the computer system, two corresponding entries of same amount of Rs. 7 lakh each were inadvertently deleted by the computer operator which resulted into a negative cash balance for the period relating to these two entries. However, there was no effect on the cash balance at the end of the year. It was also submitted that the books of account had been duly audited by the Chartered Accountant and audit report along with audited financial statement had been furnished in the

course of assessment. It was also contended that there cannot be any manipulation to the books of account since assessee being a dealer of Samsung Home Appliances, he has to maintain records of each customer for their warranty/guarantee card details. Thus, there was no question of manipulating the books of account. It is purely a mistake occurred inadvertently. Assessee also furnished the details of two accounting entries which got deleted having a nullifying effect, the same are reproduced as under:

1.	01.04.2016	Cash A/c	Dr. 7,00,000
		To Prop. Capital A/c. (Being cash Received from proprietor)	7,00,000
2.	10.04.2016	Prop. Capital A/c. To Cash A/c. (Being cash paid to proprietor)	Dr. 7,00,000 7,00,000

3.2. In order to explain the nature and source of deposit of cash in the bank account during the demonetization period, assessee furnished month wise details of cash sale, cash deposit and withdrawal for the year under consideration as well as for the immediately preceding year which has been reproduced in the impugned assessment order. Ld. AO based on these submissions of the assessee, noted certain discrepancies which are listed as under:

- (i) The books of accounts were audited; but auditor did not identify the mistake as claimed by the assessee.
- (ii) The assessee could not substantiate the cash sale comparing credit sale + cash sale with the total sale during the financial year.
- (iii) The statement regarding payments received from partner and paid to partner during the year have not been substantiated with proof; only statement is not sufficient.

- (iv) As per cash statement, no cash expenses were made which belie the statement.

3.3. Ld. AO thus rejected the books of account of the assessee as he found that the cash book maintained by the assessee is not satisfactory. While making the assessment, Ld. AO made the addition towards deposit of cash of Rs.1,51,76,477/- after reducing the opening balance of cash in hand of Rs.33,523/-. Thus, the assessment was completed at an assessed total income of Rs.1,95,53,257/-. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. Before the Ld. CIT(A), assessee challenged the action of the AO of rejecting the books of account. He also challenged the jurisdiction of the AO of passing the assessment order u/s. 144 of the Act along with the addition made in completing the assessment. Ld. CIT(A) dismissed the appeal of the assessee both, on the legal issues as well as on merit of the case. While dismissing the legal issues, Ld. CIT(A) observed that the bar of natural justice has been breached by the assessee by not complying to the statutory notice issued by the Ld. AO. He further observed that assessee was deliberately not attending the hearings owing to deficiency and defect in the books of account as it would lead to adverse consequences and thus, he chose to be non-compliant. According to him, it became a necessity for the AO to reject the books of account. Therefore, to bring assessment proceeding to a logical conclusion books of accounts were rightfully rejected u/s. 145(3) of the Act to determine correct assessable income. On the merits of the case, Ld. CIT(A) observed that the alleged cash sales during the demonetization window accounts for 89.9% of the total cash sales activity of the assessee for the entire year. According to him, assessee could not satisfactorily explain the phenomenal spike in

the cash sales. Further, negative cash balance was also not satisfactorily explained and, therefore, AO had rightfully added the income u/s. 68 of the Act. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee reiterated the facts already narrated above. At the outset, we note that the impugned assessment order is passed u/s. 144 of the Act by rejecting the books of account u/s. 145(3) of the Act. In ground no. 1, assessee has challenged the action of AO of rejecting the books of accounts. Before we delve on the issue, we quote provisions contained in sec. 145(3) of the Act.

“(3)Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) [has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2)], the Assessing Officer may make an assessment in the manner provided in section 144.]”

6. From the perusal of the above provision, it is noted that there are three specific situations under which the Ld. AO may make an assessment in the manner provided in section 144, which are as under:

- (i) where the AO is not satisfied about the correctness or completeness of the accounts of the assessee;
- (ii) where the method of accounting has not been regularly followed by the assessee;
- (iii) where the income has not been computed in accordance with the notified standards.

7. In the present case before us, situations noted in (ii) and (iii) are not relevant. The situation mentioned in (i) needs to be considered in the present case about the satisfaction of the correctness or completeness of the account of the assessee. In this respect, ld. AO

has inferred that cash book has been manipulated owing to negative cash balance. Assessee in this respect has furnished his explanation about inadvertent deletion of two corresponding accounting entries which had negative impact over a very small period from 01.04.2016 to 10.04.2016. Otherwise, there was no impact on the cash balance at the year end.

7. We have gone through the submissions and explanations furnished by the assessee before the authorities below which have been substantiated by corroborative documentary evidence. Rejection of books of account cannot be done in a light hearted manner. It is for the department to prove satisfactorily that account books are unreliable, incorrect or incomplete before its rejection. The basic presumption is in favour of correctness of books of accounts prepared and maintained by the assessee and furnished in the course of proceedings before the authorities. It is also pertinent to note the claim of the assessee that though there was a negative cash balance which appeared in the cash book furnished in the course of assessment, due to inadvertent error at the time of printing the said cash book, the same does not have any tax implication nor have any effect on the cash balance at the year end. Ld. DR submitted that assessment is made u/s. 144 and there is an issue of spike in cash sales. It will be proper if the matter is remitted back to the file of AO who can examine the cash book and thereafter recomputed the total income. In the light of the above discussion and the facts, we find it proper to remit the matter back to the file of the Assessing Officer to examine the cash book based on which audited financial statements were furnished by the assessee. Based on the said examination, the AO needs to arrive at the conclusion on the applicability of section 145(3) of the Act. Needless to say that assessee be given a reasonable

opportunity of being heard to make all the relevant submissions in support of his claim. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 29th February, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29th February, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi.
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata