

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Ms. Astha Chandra, Judicial Member**

ITA No. 3110/Del/2023: Asstt. Year: 2017-18

Sarvodaya Pharmacy, C/o Matta Garg & Co., Chartered Accountants, 15, Astley Hall, Dehradun-248001 (APPELLANT)	Vs	The DCIT, Circle-2(2)(1) (RESPONDENT)
PAN No. ADAFS 0509 B		

**Assessee by : Sh. Shivam Garg, Adv.
Revenue by : Sh. Piyush Tripathi, Sr. DR**

Date of Hearing: 13.02.2024	Date of Pronouncement: 29.02.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

This appeal has been filed by the assessee against the order of Id. NFAC/CIT(A), Delhi dated 29.09.2023.

2. Following grounds have been raised by the assessee:

"1. The learned assessing officer as also learned CIT(A) have erred in making and confirming addition of Rs.7,87,875/- on account of cash deposited into the bank during demonetization period allegedly u/s 68 of the Income Tax Act, 1961.

2. The learned assessing officer as also learned CIT(A) have erred in making and confirming addition of Rs.1,76,00,000/-of loans taken allegedly u/s 68 of the Income Tax Act, 1961.

3. The learned assessing officer has erred in invoking provision of section 115BBE on addition on account of cash deposited to the bank during demonetization period and loans taken.

4. *The Penalty provision us 271AAC and us 270A have wrongly been initiated against the provisions of law and facts of the case.*

5. *The order passed is arbitrary, against the provisions of law and facts of the case."*

3. The additional grounds have been raised by the assessee:

a) *On the facts and circumstances of the case, the assessment framed is void-ab-initio as the proceedings of assessment were initiated by an AO who was no having pecuniary jurisdiction over the assessee in terms of CBDT norms.*

b) *On the facts and circumstances of the case, the assessment order passed by the assessing office u/s. 143(3) of the IT Act 1961 is void-ab-initio as no fresh notice of 143(2) has even been issued by the AO having jurisdiction over the assessee.*

4. The assessee is a partnership firm and in the business of Retail trading of drugs & pharmaceutical products. The assessee filed his return of income on 27.10.2017 declaring total income of Rs. 27,71,350/- which was selected for scrutiny and an assessment u/s 143(3) of the Income Tax Act, 1961 has been framed on 30.12.2019, assessing the total income at Rs.2,66,74,350/-.

5. During the course of assessment proceedings, the Assessing Officer made various additions amounting to Rs. 2,39,03,000/- u/s 68 on the following grounds:

- Addition of Rs. 31,51,500/- on account of SBNs deposited during demonetization
- Addition of Rs. 31,51,500/- on account of alleged reduction of value of closing stock

- Addition of Rs. 1,76,00,000/- on account of unexplained unsecured loans

6. On appeal before the Id. CIT(A), the appeal of the assessee was partly allowed. The Id. CIT(A) held as under:

- Restricted the addition of Rs. 31,51,500/- on account of SBNs deposited during demonetization to 25% i.e. Rs. 7,87,875/-
- Deleted the addition of Rs. 31,51,500/- made by the AO on alleged reduction of value of closing stock
- Sustained the addition of Rs. 1,76,00,000/- made by AO treating unsecured loan as unexplained credits.

7. Aggrieved the assessee filed before the ITAT.

8. Heard the arguments of both the parties and perused the material available on record.

Restriction of the addition of Rs. 31,51,500/- on account of SBNs deposited during demonetization to 25% i.e. Rs. 7,87,875/-:

9. The notification dated 08.11.2016 of Ministry of Finance (DEA) is as under:

*MINISTRY OF FINANCE
(Department of Economic Affairs)
NOTIFICATION
New Delhi, the 8th November, 2016*

S.O. 3408(E).—Whereas, by the notification of the Government of India in the Ministry of Finance, vide F. No. 10/3/2016-Cy.I dated 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 8th

November, 2016, the Central Government declared that the bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees (hereinafter referred to as the specified bank notes), shall cease to be legal tender on and from the 9th November, 2016;

And whereas, it has become necessary to notify certain exemptions for the convenience of the members of public in carrying out certain emergent and urgent transactions using the specified bank notes;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby declares that the specified bank notes shall not be ceased to be legal tender, with effect from the 9th November, 2016 until the 11th November, 2016, to the extent of transactions specified below, namely:-

(a) for making payments in Government hospitals for medical treatment and pharmacies in Government hospitals for buying medicines with doctor's prescription;

(b) at railway ticketing counters, ticket counters of Government or Public Sector Undertakings buses and airline ticketing counters at airports for purchase of tickets;

(c) for purchases at consumer cooperative stores operated under authorisation of Central or State Governments;

(d) for purchase at milk booths operating under authorisation of the Central or State Governments;

(e) for purchase of petrol, diesel and gas at the stations operating under the authorisation of Public Sector Oil Marketing Companies;

(f) for payments at crematoria and burial grounds;

(g) at international airports, for arriving and departing passengers, who possess specified bank notes, the value of which does not exceed five thousand rupees to exchange them for notes having legal tender character;

(h) for foreign tourists to exchange foreign currency or specified bank notes, the value of which does not exceed five thousand rupees to exchange them for notes having legal tender character.

2. All establishments referred to in paragraph 1, shall maintain complete account of record of stock and sale of transactions made with the specified bank notes during the period between 9th November, 2016 and 11th November, 2016.

IF. No. 10/03/2016-Cy. I]
Dr. SAURABH GARG, Jt. Secy.

10. The notification of the Department of Expenditure dated 09.11.2016 is as under:

MINISTRY OF FINANCE
(Department of Economic Affairs)
NOTIFICATION
New Delhi, the 9th November, 2016

S.O. 3416(E).—In exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby amends the notification of the Government of India, Ministry of Finance, Department of Economic Affairs number S.O. 3408(E) dated the 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 8th November, 2016, namely:

1 In the said notification, in paragraph 1, after clause (h), the following clauses shall be inserted, namely

"(i) for **making payments in all pharmacies on production of doctor's prescription and proof of identity;**

(j) for making payments on all toll plazas on the State and National Highways;

(k) for payments on purchases LPG gas cylinders;

(1) for making payments to catering services on board, during travel by rail;

(m) for making payments for purchasing tickets for travel by suburban and metro rail services;

(n) for making payments for purchase of entry tickets for any monument maintained by the Archeological Survey of India."

[F. No. 10/03/2016-Cy.1]
Dr. SAURABH GARG, Jt. Secy.

11. The assessee declared gross profit of Rs. 1.31 crores over the turnover of Rs.5.97crores declaring gross profit of 22.00%. The cash deposited was of Rs. 63,30,500/- during the year. The Assessing Officer alleged that the cash deposits during the demonetization period was of Rs. 37,51,500/- and hence, brought the same to tax without bringing any other material on record. The Id. CIT(A) restricted this amount to Rs. 7,87,875/- i.e. @ 25% of the cash deposited during the period without giving any valid, tangible, substantial or logical reasons. .

12. The assessee submitted that there in the business of retail trading of drugs & pharmaceutical products. The assessee had sufficient stock of medial product which tallied with the books of accounts. The AO has accepted the stock position and also accepted the correctness of the books of accounts. The medicinal products were allowed to be sold in cash during the demonetization period and cash sales commensurate with the stock in hand and also there was no abnormal increase in the cash sales when compared to the stock in hand, turnover and the gross profit. Hence, we hold that no addition u/s. 68 is called for in this case.

Addition - Rs. 1,76,00,000 - unsecured loans:

13. During the year, the assessee has taken fresh unsecured loans for Rs.2,21,00,000/- from various Individuals & HUFs. The assessee was asked to justify the fresh loans taken along with details of the parties, Confirmations of the parties, copy of Bank Statements, ITR & details of source of the loans given to assessee firm. The assessee vide reply dated 14.12.2019, and

24.12.2019 submitted party confirmations, ITRs, Bank Statements for all the parties. On perusal of details submitted, the Assessing Officer held that the parties from whom loan of Rs. 1,86,00,000/- were received, their credit worthiness & genuineness of the transactions was not established by the assessee.

14. The Assessing Officer held that on cumulative analysis of the transactions it was clear that the partners through rotation have succeeded in introduction of loans in assessee firm during F.Y. 2016-17. The Assessing Officer held that the Modus-Operandi of the transactions clearly showed that in order to avoid tax and to introduce the funds in assessee firm as fresh Loans the partners of the firm have taken shadow of the transaction of unsecured Loans. The AO mentioned that it is clearly established that none of the above parties were having balance in bank account for more than Rs.50,000/- and in some cases it was below Rs. 10,000/- before the transfer was made to the assessee firm. The AO held that it is beyond imagination that the cumulative total income for above 10 parties is for Rs. 26,60,744/- (excluding interest income received from assessee firm for Rs.25,74,166) and against the total income of Rs.26.6lakh a Loan amount of Rs.1.86cr has been given by the parties, which clearly shows that the ITR filed by the parties were not in consonance with the banking transactions and the parties are clearly not credit worthy of advancing such huge amount as loan to assessee firm. The AO held that mere producing paper trails and routing transactions through banking channels does not make the transaction genuine per-se, it is the

substance of the transaction along with corroborative evidence which establishes the intent & genuineness of the transaction.

15. The Assessing Officer held that from perusal of bank statements & chain of events & transactions, it was clear that the genuineness of the transaction and the parties & creditworthiness of the parties was clearly not established and transactions with the partners & Ghaziabad Nursing Home and other parties clearly show that the assessee has routed its own money and has credited the same in its books of accounts as Fresh Un-secured Loan.

16. The Id. CIT(A) affirmed the action of the Assessing Officer.

17. On examination of the details, we find that the loan amounts received by the assessee namely, Sarvodaya Pharmacy from 9 parties were the amounts which was given earlier as unsecured loans to Ghaziabad Nursing Home and the same have been repaid to the parties by Ghaziabad Nursing Home and the same amount has been inturn given as unsecured loans to the Sarvodaya Pharmacy. We have verified the date of investment of the amounts by the parties in Ghaziabad Nursing Home, the amounts withdrawn from Ghaziabad Nursing Home account and the amount given to the assessee as unsecured loans. The bank accounts reflecting receipt and repayment of these monies from 2012-13 from Ghaziabad Nursing Home to 2016-17 and subsequent lending of the amounts by the same persons to the assessee are examined. The details are as under:

NAME OF LENDER	DATE OF INVESTMENT IN GHAZIABAD NURSING HOME	AMOUNT WITHDRAWN FROM GHAZIABAD NURSING HOME	DATE OF WITHDRAWAL FROM GHAZIABAD NURSING HOME	AMOUNT LENT TO THE ASSESSEE (Added by AO)	DATE ON WHICH AMOUNT WAS GIVEN TO ASSESSEE
ALKA AGGARWAL	Before 01/04/2012	20,00,000/-	27.04.2016	20,00,000/-	28.04.2016
DIVESH AGARWAL	01.10.2013	26,00,000/-	31.03.2016	26,00,000/-	12.04.2016 22.04.2016
RAMIT GOYAL (HUF)	28.12.2013 & 25.06.2014	25,00,000/-	27.04.2016	25,00,000/-	28.04.2016
SANTOSH KUMARI	04.07.2015	30,00,000/-	25.04.2016	30,00,000/-	26.04.2016
SATYA NARAIN AGGARWAL	14.12.2012	20,00,000/-	25.04.2016	20,00,000/-	26.04.2016
SHYAM SUNDER AGGARWAL	29.11.2014 & 13.12.2014	15,00,000/-	31.03.2016	15,00,000/-	22.04.2016
	TOTAL	1,36,00,000/-		1,36,00,000/-	

NAME OF LENDER	AMOUNT LENT TO THE ASSESSEE	DATE OF AMOUNT GIVEN TO ASSESSEE	SOURCE OF LENDER (as per BANK STATEMENT OF LENDERS)
ANUBHA SRIVASTAVA	5,00,000/-	19.07.2016	<ul style="list-style-type: none"> • 3,00,000/- Reed. From Sarva Retail Pvt. Ltd. (12.07.2016) • 1,80,000/- From Vinod Kumar Gupta (12.07.2016) • 20,000/- Cash Deposit (19.07.2016)
SURENDER KUMAR & SONS (HUF)	20,00,000/-	30.04.2016	19,50,000/- Transfer from Acc. No. 00763811029812 on 30.04.2016
VINOD GUPTA HUF	15,00,000/-	11.05.2016	15,00,000/- RTGS-Kamlesh on 10.05.2016
TOTAL	40,00,000/-		39,50,000/-

18. Since, the source of amounts have been duly explained and examined, we hold that no addition on this account is called for.

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

Order Pronounced in the Open Court on 29/02/2024.

Sd/-
(Astha Chandra)
Judicial Member

Dated: 29/02/2024

Subodh Kumar, Sr. PS

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Copy forwarded to:

Appellant
Respondent
CIT
CIT(Appeals)
DR: ITAT

ASSISTANT REGISTRAR