

**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. 2819/Del/2023: Asstt. Year: 2017-18**

Xyata Life Sciences Pvt. Ltd., D-214, Saket, New Delhi 110017 (APPELLANT)	Vs	ITO Ward 27(4), New Delhi (RESPONDENT)
<b>PAN No. AACCT 7901 N</b>		

**Assessee by : Sh. Naman Gupta, CA  
Sh. Parveen Makhija, CA  
Revenue by : Sh. Piyush Tripathi, Sr. DR**

<b>Date of Hearing: 15.02.2024</b>	<b>Date of Pronouncement: 29.02.2024</b>
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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 09.08.2023.

2. Following grounds have been raised by the assessee:

*"1 That the order of the Ld. CIT(A) is arbitrary, biased, wrong and bad in law and in facts and circumstances of the case.*

*2. That the appellant had filed all replies with all documents as requested from time to time with the Ld. AO and most of the replies were filed online at Income Tax Portal only.*

*3. That the appellant was a retail trader of medicines including injections etc till date. Also, the appellant was issued various Certificates under Drugs and Cosmetic Act, 1940 by Department of Drugs Control, Okhla (54) Circle, Drugs Control Directorate, Government of Delhi, Okhla for distribution of medicines to retail cash customers/patients and other chemist. (Copy of Certificates is attached)*

3.1 That the appellant was running Pharmaceutical Business from last many years and regularly receives cash being a retail and wholesale dealer and carries on his business with Indian Currency having Legal tender for Doctors and Chemist as prescribed by the RBI at the time of Demonetization. That as per RBI.

Notification No. SO 3416(E) dt. 09.11.2016 and subsequent SO specifies that the medical shops, pharmacy as one of the specified entities permitted to accept the Special Bank Notes (SBN) of Rs 1,000 and Rs 500 towards sale of medicines. Hence, resulting into abnormal increase in cash deposit by the appellant as most of the customers/patients tried to buy more medicine than in regular course with the intention to avoid huge ques at bank for cash deposit for small amounts.

*The Hon'ble Income Tax Appellate Tribunal, Bangalore held in the matter of ITO vs Manasa Medicals vide ITA No. 552/Bang/2022 that " ..... AO did not reject the books and had not brought any anything contrary on records to show that Cash Sales is not the source for the cash deposited during demonetisation period." Copy Attached.*

4. That the Ld. CIT(A) has alleged to have issued various notices during June 2023 to Sept 2023 to the appellant at arvinder.singh@yata.in but was never delivered to the appellant and the director was also not well and was suffering from heavy lower back pain in spinal cord and was on complete bed rest during June,2023 to Sep, 2023 and could not attended his office also. (Copy of Prescription is attached). But in fact, no manual notice was tried to be issued by the Ld. CIT(A) to the appellant. Hence, an ex-parte order under Section 250 read with Section 143(3) was made.

4.1 That the facts and circumstances of the present case are identical with following pre-decided cases :-

a) Tin Box Co. vs CIT 249 ITR 216 SC (2001) (Copy attached)

*The Hon'ble Supreme Court had said:*

*"We will straightaway agree with the assessee's submissions that the Income Tax Officer had not given to the assessee proper opportunity of being heard."*

b) In Jawahar Lal Chawla vs ACIT ITA No. 3844/DEL/2010, the assessee's adjournment was rejected by CIT(A). The Hon'ble 'D' Bench of Delhi Tribunal had remanded back the appeal to the file of AO with a direction to make a denovo assessment. (Copy attached)

c) *Gopi Chand vs ITO in ITA No. 3386/Del/2018 (Copy attached)*

5. *That the appellant was alleged that deposited Rs 42,87,000/- in his bank a/c. However, the appellant had total deposited a Cash of Rs 98,91,262/- out of which Rs 56,04,262/- was accepted as cash deposited out of Cash sales and rest Rs 42,87,000/- was rejected without explaining the grounds of rejection and for no reason inspite of fact that the entire sales of Rs 5,17,95,208/- was accepted by the Delhi VAT Department and also issued an order of assessment of NIL demand to the appellant which was already presented before the AO. (Copy of Assessment Order of DVAT Dept is attached).*

6. *That the invoking the provisions of Section 68 of the Income Tax Act, 1961, the Ld. AO further erred by not rejecting the Books of Accounts of the appellant and by adding the partly cash sales back to the income of the assessee which was already offered to tax and hence, such amount of Rs 42,87,000 leads to double taxation. Therefore, the entire addition of Rs 42,87,000/- may liable to be quashed.*

- *That the same view was also upheld by the Hon'ble Delhi ITAT in the matter of DCIT vs Manuvel Malabar Jewellers Pvt. Ltd. 2023 TAXSCAN (ITAT) 2162 where it was held that "cash deposited out of cash sales cannot be treated as income under section 68 once the sales are not disputed." Copy of order is attached.*
- *The Hon'ble Income Tax Appellate Tribunal, Bangalore held in the matter of ITO vs Manasa Medicals vide ITA No. 552/Bang/2022 that"..... AO did not reject the books and had not brought any anything contrary on records to show that Cash Sales is not the source for the cash deposited during demonetisation period." Copy Attached."*

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

"1. *That the CBDT had issued through a Circular No. 19/2019 dt. 14.08.2019 stating that "any communication issued by the Income Tax department that is issued on or after the date of issue of above said circular must include Document Identification Number (DIN). If a communication does not include DIN, it will be deemed to be invalid and will have no legal effect." Copy of Circular is attached.*

1.1. *That the concept behind issuing the DIN is to ensure legal validity, compliances, authentication, accountability and traceability. But in present case, the order issued by the Ld. AO on 31.12.2019 does not carry the DIN as mandatory requirement of the CBDT for issuing any notice, order etc. The said order cannot be authenticated and traceable by the appellant on the Income tax*

*Portal at the option of - "AUTHENTICATE NOTICE/ORDER ISSUED BY ITD". (Copy of screenshot of the same is attached). Therefore, order issued by the Ld. AO is invalid and liable to be quashed.*

- *That the Hon'ble Member Sh. N.K. Billaiya and Sh. Anubhav Sharma of Delhi 'B' Bench of Income Tax Appellate Tribunal in the matter of M/s. Hardik Rao vs DCIT Central Circle -7, Delhi vide ITA No. 1902/DEL/2022 dated 18.07.2023, held that "we have no hesitation to hold that the assessment order framed by the AO under section 143(3) was not containing DIN in respect of Circular of 2019 of CBDT and order framed was null and void and nonest."*
- *That the same view was also upheld by the Delhi Bench of Hon'ble Members Sh. Shaktijit Dey and Sh. Dr. B.R.R. Kumar of Income Tax Appellate Tribunal, Delhi in the matter of Beacon Higher Education Services vs CIT (A)-2, Delhi vide ITA No. 1915/DEL/2020.*
- *That the Hon'ble Income Tax Tribunal, Pune Bench in ITA No. 401/PUN/2022 in the matter of Prabhakhar Amuta Shillak vs ITO, held that "the assessment order bears no DIN in the body thereof, thus the assessment order undisputedly was communicated in violation of Para-2 of CBDT Circular (Supra).... Thus, Communication of assessment order suffered from compliance and rendered itself invalid as if it has never been issued to the assessee."*

4. The additional grounds not pressed.

5. The only issue pertains to deposit of cash of Rs. 42,87,100/- which has been treated u/s. 68 of the Income Tax Act, 1961. The appellant had total cash deposits of Rs. 98,91,262/- out of which Rs. 56,04,262/- was accepted by the Revenue as cash sales and rejected the explanation of the assessee with regard to the cash sale of Rs. 42,87,100/-.

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

7. 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.*

8. 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 8<sup>th</sup> November, 2016 published*

*in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 8<sup>th</sup> 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;*

*(l) 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.*

9. The assessee declared gross profit of Rs. 3.15 crores over the turnover of Rs. 5.17 crores declaring gross profit of 60.85% against the gross profit of 60.43% in the earlier year. The net profit declared during the year was 13.39%. The cash deposited in the year 2015-16 was Rs. 20,45,000/-, in the year 2016-17 was Rs. 17,61,000/- and in the current year Rs. 42,87,100/-. The Assessing Officer alleged that the cash deposits were during the demonetization period and hence, brought the same to tax without bringing any other material on record.

10. 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.

11. 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**

\*NV, Sr. PS\*

Copy forwarded to:

Appellant  
Respondent  
CIT  
CIT(Appeals)  
DR: ITAT

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

**ASSISTANT REGISTRAR**  
**NEW DELHI**