

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 1125/Ahd/2023
Assessment Year : 2017-18

Rajesh Hariram Mohta, 45, Jay Nagar Society, B/h. Sardar Patel Hospital, Rambaug, Maninagar, Ahmedabad-380008 PAN : ABOPM 4792 N	Vs.	Income-tax Officer, Ward-6(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Dhinal Shah & Shri Bhadresh Gandhakwala, ARs
Revenue by:	Shri Urjit B. Shah, Sr. DR

सुनवाई की तारीख/Date of Hearing : 07/03/2024
घोषणा की तारीख /Date of Pronouncement: 20/03/2024

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 03.11.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2017-18.

2. The ground raised by the assessee is as under:-

"The learned CIT(A) has erred in confirming the addition of Rs.29,55,000/- being cash deposited in the bank account under Section 69A inasmuch as the cash deposited is out of cash on hand [which is out of cash sales and cash withdrawn] from the business and that the entire amount is from explained sources."

3. The solitary issue in the present appeal relates to addition made to the income of the assessee on account of cash deposits in the bank account of the assessee amounting to Rs.29,55,000/- remaining unexplained.

4. We have heard both the parties and have gone through the orders of both the Assessing Officer and Id. CIT(A). We may state that both the orders have been passed in faceless proceedings and it appears that in the behind-the-scenes proceedings anything and everything has been done without any application of mind to the facts before it. In fact, even from the orders passed by the authorities below, there is no clarity on the facts and it is not clear as to how the authorities below have arrived at a finding of the cash deposits remaining unexplained.

5. This is patent from the fact that the assessment order states, in paragraph No. 2 of the order, that the assessee had filed copy of Return of Income, P&L account, Balance Sheet, Audit Report, VAT returns, Statement of Total Income, Bank Statements, Ledger of Sundry Creditors Parties & Cash-book. After stating so, the order notes that notice u/s 142(1) of the Act was issued to the assessee asking it to furnish, amongst other things, Cash Book for verification and copy of all bank statements maintained during the year. This, when in the preceding sentence itself, the order notes that both of them were furnished by the assessee.

6. The absurdity does not end here; in the very next line in paragraph No.3, the order notes that in response to the notice asking the assessee to file the aforesaid documents, nothing was submitted. Again, fact contrary to what was noted in the beginning of the assessment order.

7. Therefore, while the order first notes to have the assessee to have filed copies of bank statements, it goes on to ask the assessee to file the same and,

thereafter records that the same were not filed by the assessee. We are not sure now as to whether the cash book and bank statements were actually filed by the assessee or not. The Id. Counsel for the assessee has contended before us that they were all filed.

8. Going further, the assessment order records that the show-cause notice was issued to the assessee for making addition of Rs.29,55,000/- which was the cash deposited in the Yes Bank account of the assessee. While the assessment order begins with the fact that the return of income was taken up for scrutiny to examine the cash deposits made during demonetization period, the rest of the order makes no mention whether this cash of Rs.29,55,000/- found deposited in the bank account of the assessee pertained to the demonetization period or otherwise. There is no whisper of this fact in the entire order. Therefore, we are clueless as to whether this Rs.29,55,000/- cash deposited in the Yes Bank account of the assessee was made during the demonetization period or during the entire financial year. Even the Id. CIT(A)'s order does not find any mention of this fact. Our doubts were only cleared by the Id. Counsel for the assessee who clarified orally before us that it pertained to the cash deposited during the demonetization period. It is an accepted fact that the assessment orders should be speaking orders brining out all facts and reasoning for the conclusions arrived. The present orders passed are failing on all aspects.

9. Going ahead, we have noted that this addition of Rs.29,55,000/- cash deposited in the bank account of the assessee, without mentioning of the period of which it relates, was made by the Assessing Officer by rejecting the cash book of the assessee for the reason that the opening balance of cash did not tally with that reflected in the return of income of the preceding year; that while the cash book showed the opening balance of Rs.10,53,120/-, in the

return of income for AY 2016-17 i.e. the preceding year showed the balance of Rs.8,90,773/-. Again, we would like to point out that, after noting that the assessee had not furnished cash book for verification in paragraph no.3 of the order, in the first paragraph itself the order notes that in response to notice u/s 142(1) wherein the assessee was required to furnish cash book for the impugned year, the same was duly submitted. Again, a contrary fact recorded.

10. Further, we fail to understand that if the opening balance did not tally, how would that factor alone lead to arriving at conclusion that it was self-created fabricated to explain the source of cash deposits. It appears to be a slightly farfetched inference. The difference in the cash balance noted is approximately Rs.1.5 lakhs. When the cash balance in the books is in excess by this amount, how would this anomaly of Rs.1.5 lakhs prove that the cash deposit of Rs.29,55,000/- was fabricated. At the most this excess cash balance in the books would go to negate explanation of source of cash deposited only to this extent of Rs.1.5 lacs. We are completely at a loss to understand how the facts before the Assessing Officer could lead to the conclusion that the cash book was fabricated for explaining cash deposits of Rs.29,55,000/-. Even the Id. CIT(A)'s order does not help us on the issue.

11. The story does not end here. As per the facts stated in the assessment order, the Faceless Assessment Department had the copy of return of income of the assessee, its P&L account, Audit Report, Statement of Total Income, Bank Statements and Cash Book in its possession. All these have been filed before us also and we have noted that the assessee had returned business income to tax. Its Profit & Loss Account placed before us at paper book page No. 27 revealed total sales made during the year of Rs.4.27 crores with the gross profit of Rs.6.43 lakhs. Even the Id. CIT(A) notes the fact that the

assessee was engaged in the business of cattle feed and edible oil by buying in bulk tankers and converting the same into 15 Kg or smaller sized tins and supplying to various retail traders. The assessee has filed its Audit Report also. The profits declared by it in its Income-tax Returns have been accepted in the assessment framed, accepting the return of income of Rs.3,34,840/-. The cash book, which was there before both the Assessing Officer and the ld. CIT(A), reflects cash receipts from sales to the tune of Rs.48,31,575/-. Besides, receipts on account of rental income of Rs.1,56,000/- and receipts from debtors of Rs.3,55,300/-. Cash withdrawals from the bank were to the tune of Rs.88,29,000/- while the assessee had opening balance of cash of Rs.10,53,120/- as per cash book. Its closing balance was Rs.3,54,285/-. Out of total cash available with the assessee, therefore, from its opening balance, cash withdrawal and cash sales and others, the assessee deposited cash in bank of Rs.1.18 crores which included the cash deposited during demonetization period of Rs.29,55,000/-. The only anomaly which the Revenue notes in the cash book of the assessee is the difference in the opening balance of cash as reflected in the cash book and as disclosed in the income-tax return of the preceding year which is, as noted by us, to the tune of Rs.1.5 lakhs. Even accounting for the same and taking the opening balance of cash as that reflected in the return of income of the preceding year, it goes to only reduce the closing balance by the said extent, i.e. Rs.1.5 lakhs, reducing the balance, therefore, to Rs.2 lakhs as opposed to Rs.3.5 lakhs shown by the assessee. There is no infirmity or doubt found by the Department in the cash deposits made during the impugned year or the cash withdrawal made during the year. The cash withdrawals made of Rs.88.29 lakhs have not been found to be utilized elsewhere. We fail to understand then that how the cash deposits of Rs.29,55,000/- remained to be unexplained. The explanation of this cash deposits comes out very clearly from the cash book itself; the

monthly summary of which is placed before us and was stated to be placed before the Id. CIT(A) also. The entire case of the Revenue rests on only the discrepancy found in the opening balance of the cash which, we have noted above, is of no consequence to effect the source of cash deposits in the bank of Rs.29,55,000/-. The Id. Counsel for the assessee pointed out that the monthly cash summary was placed before the Id. CIT(A). The cash flow for the month of October and November was placed before him explaining the source of cash has been from withdrawals. The letter of Yes Bank was submitted giving details of total cash deposited in the account of the assessee during demonetization period in the specified bank notes; the balance sheet and Profit & Loss Account was available with the Department reflecting business carried out by the assessee - earning income from cash sales also. The summary of Sales Register Vs. VAT returns was also filed. The Tax Audit Report was submitted. All the above documents were placed before us in paper-book numbering 27 pages. In view of the above, we find that there is no basis or there is no case made out by the Revenue for treating the cash deposits in the bank account of the assessee to the tune of Rs.29,55,000/- as unexplained. The addition made accordingly u/s 69A of the Act is directed to be deleted. The appeal of the assessee is allowed.

12. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 20th March, 2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 20/03/2024

*bt**

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

True Copy

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad