

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 331/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Fashion Zone Ekjot Nagar, Bhahdur Ke Road, Ludhiana, Punjab-141001	बनाम	The JCIT Ward III(2), Ludhiana
स्थायी लेखा सं. / PAN NO: AADFF9589J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate and
Shri Rishabh Marwah, C.A
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 04/01/2024
उद्घोषणा की तारीख/Date of Pronouncement : 20/03/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/ NFAC Delhi dt. 16/03/2023 pertaining to Assessment Year 2017-18.

2. At the outset, it is noted that there is a delay in filing the present appeal by 8 days as pointed out by the Registry.
3. In this regard, the Assessee, through its partner moved a condonation delay application along with Affidavit wherein it has been mentioned that though the appeal fee was deposited in time, as he was down with viral fever from 11/05/2023 to 18/05/2023 and was confined to bed and due to which he was not in a position to sign the requisite documents for the purpose of filing the appeal and also on account of shifting of office of their counsel to new premises, there was a delay of eight days. It was accordingly submitted that the delay so happened in filing the present appeal may be condoned and the appeal be admitted for adjudication.
4. The Ld. DR is heard who has not raised any serious objection to the condonation of delay.

5. After hearing both the parties and considering the material available on the record, we find that there was reasonable cause for delay in filing the present appeal which is hereby condoned and the appeal of the assessee is admitted for adjudication.

6. In the present appeal, Assessee has raised the following concise/amended grounds of appeal:

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the order of Assessing Officer and, thereby, confirming the addition of Rs. 19,13,078 on account of 'cash deposits' in the regular bank account of the assessee.

2. That the Ld. CIT(A) has failed to appreciate that the books of accounts have been accepted and not rejected u/s 145(3) and cash deposited in the books of accounts is out of regular sale proceeds of the assessee's business, for which, there was sufficient stock and, thus, the confirmation of addition is on surmises and conjectures.

3. Notwithstanding the above said ground of appeal, since the sales made by the assessee have been accepted as per books of accounts and, as such, the addition made u/s 68 to the tune of Rs. 19,13,078/- amounts to double addition, which is not proper when all the purchases and sales have been accepted.

4. That appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

7. Briefly the facts of the case are that the assessee firm is engaged in the manufacturing and trading of Hosiery goods and readymade Garments. It filed its return of income declaring total income of Rs. 1,33,650/- which was selected for scrutiny and notices were issued. As per the AO, the assessee has made cash deposit of Rs. 50,00,000/- during the demonetization period and out of which Rs. 48,00,000/- have been deposited on 13/11/2016 and in its response, the assessee has submitted that an amount of Rs. 17,13,078/- were cash receipt from the identifiable persons with PAN which have been duly furnished by the assessee. In respect of the remaining amount of Rs. 30,86,922/-, it was submitted by the assessee that the same relates to cash sales of knitted clothes to certain unidentifiable persons without PAN. The AO further stated that the assessee has filed copy of the cash book and retail invoices from 06/10/2016 onwards and on perusal thereof, certain abnormal features in the cash book were noted namely, i) prior to October 2016, there are very nominal instances of cash sales. It is from 06/10/2016 that cash sales have abruptly gone up. As on 05/10/2016, there was

cash in hand of Rs. 13,52,272/- which has gone up to 48,10,944/- as on 06/11/2016 that is in a month, ii) the cash sales of the assessee have again come down from 30/12/2016 onwards, iii) there have been no cash deposits in bank prior to 13/11/2016, iv) the assessee has itself admitted in its reply that cash deposits in bank and cash sales were much below the cash deposits during demonetization period and sales as compared to months of October and November, 2016. It was accordingly held by the AO that the maintenance of bank account of the assessee including cash book is not trust worthy and verifiable. It was stated by the AO that the cash book upto 05/10/2016 reporting cash in hand of Rs. 13,55,272/- was apparently written in normal course and some abnormality were however noticed after 05/10/2016. Further excess cash deposit of Rs. 2,00,000/- in the bank were confronted to the assessee however no satisfactory reply has been furnished. Thereafter taking into consideration the entirety of facts and circumstances of the case, source of cash deposit amounting to Rs. 30,68,350/- (Rs. 17,13,078/- plus Rs. 13,55,272/-) was found to be explained by the assessee. However, the remaining amount of Rs. 19,13,078/- (Rs. 50,00,000/- minus Rs. 30,86,922/-) was considered as undisclosed cash credit in the book of account of the assessee which were brought to tax under section 68 r.w.s 115BBE of the Act.

8. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since confirmed the said action of the AO. As per the Ld. CIT(A), the assessee had deposited Rs. 48 lacs during the demonetization period. Out of this, Rs. 17,13,078/- was received from persons having PAN and Rs. 30,86,922/- was received from persons without PAN. The appellant has also shown cash balance on 05/10/2016 at Rs. 13,55,272/-. Prior to October, 2016, there was very nominal cash sales. There was no cash deposited in bank prior to 13.11.2016 (i.e. before demonetization). There were nominal cash sales after 30.12.2016. Cash deposited in bank and cash sales in earlier years were much less than cash sales and cash deposited during demonetization period. The appellant claimed that the appellant has sold the old stock by clearing sale however, no such incident was reported in earlier years. Considering the overall facts and circumstances of the case, it was held that the facts of the appellant was against the preponderance of the probability and the AO was more than liberal in accepting the opening cash balance on 05.10.2016 and also sales to persons having PAN.

Considering the above, the action of the AO and addition of Rs. 19,13,078/- was confirmed.

9. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

10. During the course of hearing, the Ld. AR submitted that there was total cash deposit of Rs. 40,00,000/- on 13/10/2016 during the demonetization period. It was submitted that the books of accounts are duly audited and AO has accepted the book results and opening stock purchased and closing stock has not been doubted by the AO. It was submitted that the assessee has been regularly paying VAT and has maintained proper record of the sale bills and copy of the VAT returns were filed during the course of assessment proceedings. It was submitted that the Revenue cannot challenge the cash sales made by the assessee as it is part and parcel of the every business and the Board has not put any bar by making any cash sales and the assessee has not done any transaction outside purview of the Income Tax Act.

10.1 It was submitted that the Courts have held from time to time that in respect of the cash sales, there is no necessity for the assessee to maintain addresses of the customers and failure to maintain the same or to supply the same when called for cannot give rise to suspicion with regard to genuineness of the transaction and reliance was placed on the decision of Hon'ble Bombay High Court in case of R.B. Jessaram Fatehchand (Sugar Dept.) Vs. CIT [1970] 75 ITR 33.

10.2 It was submitted that there is nothing which is in the nature of undisclosed in the case of the Assessee. The Assessing Officer has made the addition by treating the cash deposits out of regular books of accounts as Undisclosed income of the Assessee which is totally incorrect. It was submitted that the Courts and Tribunal have held time and again that where sales have been declared by the assessee than making addition of the same under section 68/69 of the Act will amount to double taxation. It was submitted that in the instant case, the sales have been accepted as per the trading account filed by the assessee and there is no new unexplained credit/investment since there is available stock with the assessee and the opening stock, purchases, sales, closing stock have been accepted and, thus, on account of the reduction of stocks, the

sale proceeds have been recorded in the regular books of accounts and the profit embedded in such sale proceeds have also been offered to tax and taxed accordingly, by the Assessing Officer and, therefore, the Ld. Assessing Officer has grossly erred in making the addition of alleged unexplained cash credit, which amounts to double addition. Reliance was placed on the following decisions:

- Smt. Charu Aggarwal & Others Vs. DCIT reported in 140 Taxmann.com 588 (Chd Trib)
- ACIT Vs. Ramlal Jewellers P. Ltd. reported in 154 taxmann.com 584 (Mum Trib)
- ACIT Vs. Hirapanna Jewellers 189 ITD 608 (Vishakhapatnam Bench)
- ACIT Vs. Himachal Fibres Limited in ITA No. 927/Del/2023 dt. 11/09/2023
- DCIT Vs. Bawa Jewellers Pvt. Ltd. in ITA No. 352/Del/021 dt. 09/06/2023
- Raj Kumar Vs. ITO in ITA No. 195/Asr/2022 dt. 11/04/2023
- Jet Freight Logistics Ltd. Vs. CIT(A) NFAC 146 taxmann.com 349 (Mum Trib)
- Pr. CIT Vs. Agson Global P Ltd. 134 taxmann.com 256 (Del HC)
- Pr. CIT Vs. Akshit Kumar in ITA No. 348 of 2019 as reported in 197 DTR 121
- Balwinder Kumar Vs. ITO in 151 taxmann.com 338 (Asr Trib) dt. 31/01/2023
- Mahesh Kumar Gupta Vs. ACIT in 151 taxmann.com 339 (Jaipur Trib)
- ACIT Vs. Chandra Surana (2023) 104 ITR 503 (Jaipur Trib)
- ACIT Vs. Mahendra Kumar Agarwal (2023) 104 ITR 455 (Jaipur Trib)
- DCIT Vs. Roop Fashion 145 taxmann.com 216 (Chd Trib)

10.3 It was submitted that from the perusal of the audit report, it is also clear that the total sales during the year under consideration have increased to Rs. 3,44,58,152/ as compared to Rs 2,55,53,672/ in the last year. Thus, there is increase in sales by 35% during the year under consideration. The said increased sales has not been doubted by the department. So, the cash sales as made by the Assessee can very well be covered under the increased sale for the year under consideration, which has duly been accepted by the department.

10.4 It was submitted that the Assessing Officer has doubted the sales as made by the Assessee, merely on the basis of the higher number of sales bills as issued by the Assessee in span of few days. The said exercise as done by the Assessing Officer is merely on doubts/suspicion and it is a settled law that doubt and suspicion, howsoever, strong it may be, cannot take the shape of evidence. Reliance is being placed on the following judgments:-

- *Commissioner of Income Tax Vs. Ram Narain 224 ITR 180 (P&H)*

- *JCIT Vs. Gramophone Company of India Ltd. 265 ITR (Kol-Trib) 46 (AT)*
- *DCIT Vs. D.N. Kamani (HUF) 70 ITD (Patna-Trib) 77*
- *Elite Developers Vs.. Dy. Commissioner of Income Tax 73 ITD (Nagpur-Trib) 379*
- *Monga Metals Pvt. Ltd. Vs. ACIT 67 TTJ (All) 247*
- *Daulat Ram Rawatmull 87 ITR 349 (SC)*

10.5 It was accordingly submitted that the addition as made by the Assessing Officer by applying the provisions of sec 68 of the Act is totally against the law as the Assessee has been maintaining audited books of accounts. The VAT department has not doubted the trading results of the Assessee. Even the Assessing Officer has not rejected the books of accounts of the Assessee and has accepted the opening stock, purchases and closing stock. The sales have been doubted only on the basis of assumptions, surmises and conjectures that the Assessee has increased cash sales for the year under consideration. It was submitted that the assessee relies on the various authorities on the subject that no addition can be made u/sec 68 of the Act on account of recorded sales by the Assessee and the addition so made by the AO and confirmed by the CIT(A) be directed to be deleted.

11. Per contra, the Ld. DR has relied on the order and findings of the lower authorities which we have taken note of and hence, not being repeated for the sake of brevity.

12. We have heard the rival submissions and perused the material available on record. The assessee has deposited a sum of Rs 48 lacs on 13/11/2016 and a sum of Rs 2 lacs on 22/02/17 in its bank account maintained with Axis Bank. The source of such cash deposits has been explained by the assessee as out of its cash sales so undertaken and it has also been explained that such cash sales are subject to VAT where VAT has been collected and deposited with the government treasury. In support of its explanation, the assessee has furnished the cash book containing the entries towards the cash sales, bank statement for the relevant period, VAT returns, copy of trading and profit/loss account and balance sheet which are duly audited. No defect has been pointed out by the AO in terms of availability of stock or in any of the documentation so submitted by the assessee or in the books of accounts. Therefore, merely the fact that certain cash deposits have been made by the assessee during the period of demonization and such deposits are on a higher side considering the past year figures cannot be basis to hold the explanation so made by the assessee as unsustainable and

treat the cash sales as bogus and bringing the cash deposits to tax u/s 68 of the Act. The comparative figures for past years can no doubt provides a starting point for further examination and verification but basis such comparative analysis alone and without any further examination which points out any defect or manipulation in the documentation so submitted or in terms of availability of requisite stock in the books of accounts, the sales so undertaken by the assessee which is duly recorded in the books of accounts cannot be rejected and treated as bogus. Therefore, we agree with the contention of the Id AR that where the cash sales duly offered to tax have been accepted, bringing the realization of sale proceeds in cash to tax will amount to double taxation and the same is clearly unsustainable in law and cannot be upheld. In view of the same, we find the explanation of the assessee as genuine and reasonable duly supported by the documentation and books of accounts and the addition so made by the AO and confirmed by the Id CIT(A) is hereby directed to be deleted.

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

Order pronounced in the open Court on 20/03/2024

Sd/-
आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
 सहायक पंजीकार/ Assistant Registrar