

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

महनीय श्री मनोज कुमर अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM,
AND HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.1151/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

DCIT Circle-1(1), Salem.	बनाम/ Vs.	M/s. A N S Jewelry 284, Omalur Main Road, Swarnapuri, Salem-636 004.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAHFA-8980-G		
(पीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Clement Ramesh Kumar (CIT) – Ld. DR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri N.Arjunraj (Advocate)- Ld. AR
सुनवाई की तारीख/Date of Hearing	:	27-03-2024
घोषणा की तारीख /Date of Pronouncement	:	03-04-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2017 - 18 arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 30-01-2023 in the matter of an assessment framed by the Ld.AO u/s.143(3) on 27-12-2019.The grounds taken by the Revenue are as under: -

1. The order passed by the CIT(A) of National Faceless Appeal Center is against facts and circumstances of the case
2. The Ld. CIT(A) of National Faceless Appeal Center has failed to appreciate the fact that appeal has to be disposed based on facts of the case and evidences submitted and not by arguments which are convincing in nature.
3. The Ld. CIT(A) of NFAC failed to appreciate the fact that even 69A is not applicable where sums are recorded in the books of account , the onus lies on the

assessee to submit evidences to the satisfaction of the Assessing Officer as required u/s.68 of the Act.

4. The CIT(A) of NFAC has erred in allowing the cash sales in demonetized currency as well as the total sales happened on 08/11/2016. The CIT(A) of NFAC has not appreciated the fact that the sales on the 08/11/2016 after the announcement of demonetisation is not backed by any evidence such CCTV footage and party-wise sales details on 08/11/2016, which were called for during scrutiny proceedings and not furnished.

5. The CIT(A) of NFAC failed to understand the fact that the Respondent had left with sufficient time to file the VAT returns for the month of November 2016, which cannot be a conclusive evidence to prove that the actual sales have happened.

6. The CIT(A) erred in deleting the additions made by the Assessing officer based on the additional evidences submitted by the assessee which were not furnished during scrutiny proceedings, for which the CIT(A) has not called for remand report.

7. The CIT(A) of NFAC erred in allowing the higher rate of interest to the unsecured loan creditors over and above the SBI rate. The loans taken from close relatives only. The payment of higher rate of relative is a method of is a method followed by the assessee to escape the higher slab of taxes.

8. For these and other reasons that may be adduced at the time of hearing and the order of the CIT(A) be reversed and the order of the Assessing Officer be upheld.

As is evident, two issues fall for our consideration i.e., (i) addition of cash deposits; (ii) disallowance of interest payments.

2. The Ld. CIT-DR advanced arguments supporting the assessment framed by Ld. AO and submitted that there were abnormal sales reported by the assessee during demonetized period. The Ld. CIT-DR drew attention to various observations made by Ld. AO in the assessment order. The Ld. AR, on the other hand, controverted the arguments of Ld. CIT-DR and supported the impugned order. The Ld. AR drew attention to various documents as placed in the paper-book. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Assessment Proceedings- Addition on account of cash deposits

3.1 The assessee is a partnership firm and stated to be engaged in jewellery business. The assessee offered income of Rs.96.55 Lacs which was subjected to scrutiny assessment to verify the source of

cash deposited by it during demonetized period. During the course of assessment proceedings, certain details were called by Ld. AO from the assessee which were duly supplied by the assessee. These details, inter-alia include, total cash deposited by the assessee during earlier financial year as well as in this financial year with break-up of cash deposited before demonetized period as well as cash deposited after demonetized period and cash deposited during corresponding periods in earlier year. The assessee also furnished month-wise summary of sales along with summary of opening and closing cash balances. This data has been tabulated by Ld. AO in the assessment order. The cash summary, for ease of reference could be tabulated as under: -

Details of monthwise cash sales and cash deposits from 01.04.2015 to 08.11.2015

Monthwise	Opening cash in hand	Cash sales, Receipts & Advance	Cash deposited in bank	Cash withdrawal from bank	Cash deposited in other branch	Cash purchase, Salary, HRA & Other expenses	Closing cash on hand
Apr 15	11,76,991.06	6,44,95,213	6,21,50,000		3,000	18,49,512.00	16,69,692.06
May 15	16,69,692.06	7,77,09,311	7,29,50,000		2,000	23,01,174.00	41,25,729.06
June 15	41,25,829.06	5,84,94,435	5,71,50,000		7,000	22,90,555.00	27,72,709.06
July 15	27,72,709.06	11,15,66,321	10,71,50,000		7,000	26,56,158.00	45,25,872.06
Aug 15	45,25,872.06	10,03,25,639	10,05,50,000		7,000	24,50,066.60	18,44,444.46
Sept 15	18,44,444.46	5,35,11,407	5,05,50,000		6,000	19,94,700.00	28,05,151.46
Oct 15	28,05,151.46	6,09,12,359	5,94,00,000		8,000	27,82,053.00	15,27,457.46
Nov till 08.11.2015	15,27,457.46	2,32,95,615	1,51,00,000		7,000	16,06,602.00	81,09,470.46

Details of monthwise cash sales and cash deposits from 01.04.2016 to 08.11.2016

Monthwise	Opening cash in hand	Cash sales, Receipts & Advance	Cash deposited in bank	Cash withdrawal from bank	Cash deposited in other branch	Cash purchase, Salary, HRA & Other expenses	Closing cash on hand
Apr 16	25,31,752.46	4,55,23,885.00	4,56,00,000		26,000	13,14,478	11,15,159.46
May 16	11,15,159.46	5,77,03,081.95	5,28,00,000		34,000	32,54,447	27,29,794.41
June 16	27,29,794.41	6,07,07,016.00	4,65,50,000	60,00,000	29,000	2,13,83,596	14,74,214.41
July 16	14,74,214.41	4,22,81,828.00	1,43,00,000	74,00,000	19,000	3,16,52,839	51,84,203.41
Aug 16	51,84,203.41	6,07,42,920.00	5,89,00,000		34,000	57,58,237	12,34,886.41
Sept 16	12,34,886.41	5,40,97,996.00	5,10,50,000		26,500	23,39,172	19,17,210.41
Oct 16	19,17,210.41	8,47,13,457.00	7,95,00,000		54,000	45,58,492	25,18,175.41
Nov. till 08.11.2016	25,18,175.41	9,59,66,797.00	2,18,50,000		21,500	3,68,665	7,62,44,807.41

3.2 The assessee submitted that total cash deposited in the bank accounts during demonetized period from 09-11-2016 to 31-12-2016 was Rs.889.35 Lacs out of which the amount of Rs.762.44 Lacs was sourced out of cash balance as on 08-11-2016 whereas the remaining cash of Rs.129.90 Lacs represent cash deposited in valid currency. In other words, the assessee submitted that cash so deposited was sourced out of sales proceeds received from customer up-to 08-11-2016. On abnormal sales on 08-11-2016, the assessee submitted that after announcement of demonetization, there was panic amongst the public and they were finding the easiest and safe way of parking the funds. At that point of time, the only option was to purchase the jewellery. The huge rush in the jewellery shops was reported widely in the media. The customers rushed to the showroom and there was increase in volume of sales. The assessee could not refuse the customers' request especially when they were doing the business for past 87 years. The sales figures were duly reported to the Sales Tax Department which has been accepted.

3.3 The assessee also filed daily cash summary for the period 01-11-2016 to 08-11-2016 as under: -

Monthwise	Opening cash in hand	Total cash received from customer	Cash deposited into
01.11.2016	25,18,175.41		
02.11.2016	25,18,175.41	61,30,832	45,06,500
03.11.2016	40,28,372.41	28,94,724	38,00,000
04.11.2016	30,59,150.41	41,50,041	48,60,000
05.11.2016	23,20,810.41	28,75,531	27,50,000
06.11.2016	24,15,029.41	19,90,313	5,000
07.11.2016	43,71,622.41	1,10,36,922	59,50,000
08.11.2016	93,55,923.41	6,68,88,884	

The source of cash deposited by the assessee was summarized as under: -

Monthwise	Opening cash in hand	Total cash received from customer		Cash deposited into	
		Demonetized currency	other currency	Demonetized currency	
09.11.2016 to 31.12.2016	7,62,44,807.41	95,000	1,78,19,419.34	7,63,00,000 (Cash deposited on 9.11.2016)	1,27,06,500

3.4 Considering the above data, Ld. AO proceeded to verify the genuineness of the assessee's claim that closing cash-in-hand as on 08.11.2016 was Rs.762.44 Lacs. After examination of assessee's reply, Ld. AO observed that the assessee's monthly sale never exceeded on an average of Rs.6.5 Crores from April 2016 to Oct 2016. However, in the month of Nov., 2016 i.e., during 01.11.2016 to 08.11.2016, the assessee have shown the cash sales of Rs.9.59 Crores which would mean that the assessee has realized 147% of average monthly sales of Rs.6.50 Crores within that period of 1/3rd of the month (01.11.2016 to 08.11.2016) which could not be accepted. Secondly, the pattern of cash deposit would show that the assessee has the habit of depositing 90% to 95% of the regular cash sales into the bank accounts immediately and cash holding capacity was very less. However, during 01.11.2016 to 08.11.2016, the assessee has shown closing cash-in-hand of Rs.9.59 Crores whereas closing cash as on 8.11.2015 was Rs.81.09 Lacs only. Further, on 07.11.2016, the assessee has shown cash sales of Rs.110.36 Lacs whereas on 08.11.2016, the assessee has shown cash sales of Rs.668.88 Lacs which was very abnormal and unreasonable. To accept claim of abnormal sales, the assessee was required to submit the proof of

CCTV record that huge customers were standing in front of the assessee's showroom which assessee failed to do so. The Ld. AO further alleged that the assessee has to deduct TCS on such abnormal sales. The assessee controverted the arguments of Ld. AO.

3.5 However, rejecting assessee's submissions, it was alleged by Ld. AO that assessee's own unaccounted money was introduced and accommodated under bogus customers' name during the demonetization period. Therefore, cash deposit of Rs.766 Lacs as deposited in Specified Bank Notes (SBN) post demonetization during the period 09.11.2016 to 30.12.2016 were added as unaccounted money u/s 69A which would be subjected to tax at maximum marginal rate u/s 115BBE.

4. Excessive interest paid on unsecured loan creditors

Another issue in the appeal is excessive interest paid to loan creditors. The Ld. AO observed that the assessee paid interest of 21% to loan creditors which are tabulated on page no.21 of the assessment order. The interest so paid aggregated to Rs.639.61 Lacs. The Ld. AO, invoking the provisions of Se.40A(2)(b) r.w.s. 37 of the Act, restricted the same to 12% and disallowed a sum of Rs.274.11 Lacs and finalized the assessment.

Appellate Proceedings

5. The assessed assailed various findings of Ld. AO and submitted that it had submitted customer-wise sales made and furnished complete sales register for verification. At no point of time, the assessee was asked to submit CCTV footage and the same could not be expected to be in existence after 3 years. Further, TCS would not apply since no single bill for sale of jewellery exceeds prescribed

threshold of Rs.5 Lacs. The assessee reiterated that there was huge rush of customer post announcement of demonetization. The entire sales made were reported to Sale Tax Department which has been accepted. The assessee maintained day-to-day stock register. Once particular sale has already been offered for taxation, the same could not be again considered for additional tax at higher rate since the same would amount to double taxation. The assessee also submitted that books of accounts were subjected to audit and accepted by Ld. AO. The assessee also assailed invocation of provisions of Sec.69A since AO neither rejected books of accounts nor doubted stock / purchases shown in the books. The cash- in-hand entries in the books could not be added again as undisclosed income u/s 69A. The assessee was having sufficient stock and the same was duly accounted for in the books of accounts. The entire sales were made from regular stock-in-hand and therefore, sales could not be doubted. The trading stock was sold, cash was received and the same was deposited in the bank accounts. The assessee furnished all the requisite details with supporting documents and necessary evidences. Complete purchase details, sales details, stock summary and cash summary were submitted which has been accepted by Ld. AO. Reliance was placed on various judicial decisions to support the submissions. The detailed submissions of the assessee have already been extracted in the impugned order.

6. The Ld. CIT(A) concurred with aforesaid submissions of the assessee and observed that the assessee maintained proper books of accounts in regular course of business which was duly audited by the independent Chartered Accountant u/s 44AB. All the sales, purchases

and stocks were recorded in the books of account which has not been doubted by Ld. AO. The sales shown by the assessee had been accepted by Sales Tax / VAT Department. The Ld. AO has not disputed the books of accounts nor pointed out any discrepancy in the sales register, stock at any time of the year. In case there are no defects in the purchases and sales and the same are matching with inflow and the outflow of stock, there could be no reason to disbelieve the sales. The cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted by Ld. AO. If the reduction of stock position is matching with the sales, the same would prove that the cash received / deposited represents the sales of the assessee. The Ld. AO did not reject the books of accounts of the assessee. Further, it is an accepted fact that no businessmen could refuse to make sales to any customer when stock is available and if it is within the four corners of law, especially when price of the gold was high and there was demand for gold at that time of the day. There was no rule that sales could not be made late in the evening or in the night. If minimum details of the customers are taken on sale bills as required under a VAT Act then sales cannot be doubted, particularly in the rush of the hour. If Ld. AO alleges that the assessee has brought the unaccounted money generated in to the books on that day then the onus would be on Ld. AO to bring on record evidence to demonstrate that such purchases and sales were made by the assessee out of books or that the assessee had other source of income which is not disclosed. In the absence of any such evidence, blind allegation cannot be accepted under the law. Therefore, the allegations of Ld. AO were held to be bereft of any such evidence. The

test of human probability could not be applied in the case since it was known fact that there was huge rush in jewellery shops and hence, huge cash sales made by the assessee on 08.11.2016 could not be doubted. The assessee brought on record increased sales on some auspicious days like *Navratri, Diwali and Akshaya Tritiya*. In the same way, increased sales could happen on demonetization as it was unique situation and there was a demand. There was no whisper in the entire impugned Assessment Order pointing out any discrepancy in stock and cash book. The appellant's books show sales with the bills and outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. Accordingly, the plea of the assessee was to be accepted and the same was supported by various decisions of Tribunal.

7. In the case of **M/s Heera Panna Jewellers (ITA N.253/viz/2020 dated 12.05.2021)** as decided by Visakhapatnam Tribunal, it was held that when the assessee had explained the source of impugned amount as sales and produced sales bills and admitted revenue receipts which were offered to tax, the addition so made by Ld. AO u/s 68 was to be deleted. The Ld. AO did not pointed out any defect in purchases and the accounts were audited u/s 44AB. Therefore, Ld. AO erred in doubting the source of cash when the assessee successfully explained that the source of cash deposited in the bank account was out of sales proceeds. Drawing strength from this decision, Ld. CIT(A) deleted the impugned additions.

8. The disallowance of excessive interest disallowance was deleted on the ground that the assessee would always need the funds to run its business. Taking loans from financial institutions would involve lot of

procedures and documents including pledging of properties. The loans from family members would be easy to take and no collateral security would be required. Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

9. From the fact, it emerges that the assessee is dealing in precious metals. It transpired that the assessee deposited cash during demonetization period, the source of which was stated to be out of sales generated by the assessee up-to 08-11-0216. In support, the assessee furnished details of total cash deposited during earlier financial year as well as during this financial year with break-up of cash deposited before demonetized period as well as cash deposited after demonetized period and cash deposited during those corresponding periods in earlier year. The assessee also furnished monthly summary of sales along with summary of opening and closing cash balances. From the tabulation, it could be seen that the assessee is always conducting substantial sales in cash which are regularly being deposited in the bank account. The assessee is maintaining healthy opening cash balance since financial year 2015-16. The assessee has maintained opening cash balance of Rs.25.31 Lacs in this year. During financial year 2016-17 also, the assessee is carrying out cash sales and maintaining healthy cash balance throughout the year. The assessee has incurred cash sales up-to 08-11-2016 which has been utilized to make impugned cash deposits in the bank accounts. Such sales have been offered in the Sales Tax Return as well as in the Income Tax Return which has been accepted. The stock-in-trade has moved out of assessee's books of account. The books have not been

rejected by Ld. AO and in fact, no single defect could be pointed out by Ld. AO in the books or financial statement of the assessee. When the sales has been reflected in the books of accounts and offered to tax, adding the same would amount to double taxation which is impermissible in law. The books are subjected to Tax Audit u/s 44AB and the assessee has maintained quantitative details of the stock-in-trade. The cash sales proceeds have been credited in the books of accounts and the same form part of assessee's cash book. On these facts, it could very well be said that the assessee's claim was backed up by sufficient documentary evidences. The allegation of Ld. AO is that such abnormal sales could not be achieved by the assessee immediately upon announcement of demonetization by the Government. However, such allegations are bereft of any concrete evidence on record. It is trite law that no addition could be made merely on the basis of suspicion, conjectures and surmises. In the present case, the assessee has duly discharged the burden of establishing the source of cash deposit and the onus was on Ld. AO to disprove the same. However, except for mere allegation and few statistics, there is nothing on record to support the conclusions drawn by Ld. AO that the assessee's own unaccounted money was introduced and accommodated under bogus customers' name during the demonetization period. The demand of Ld. AO to produce CCTV recording after lapse of considerable period of time could not be said to be reasonable particularly when all the other evidences supports the case of the assessee. There is no finding by Ld. AO that any particular sales affected by the assessee exceeded threshold limit which would require collection of tax at source (TCS). Since cash generated out of

sales has been credited in the books of accounts, the provisions of Sec.69A could not be invoked in the present case. The case laws as cited by Ld. CIT(A) duly supports the case of the assessee. Under these circumstances, the impugned additions have rightly been deleted by Ld. CIT(A). The same could not be faulted with. Therefore, the corresponding grounds raised by the revenue stand dismissed.

10. So far as the disallowance of excessive interest u/s 40A(2)(b) is concerned, we find that it the prime requirement of Sec.40A(2)(a) that the assessee incurs any expenditure in respect of which payment is to be made to a specified person and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as deduction. Thus due regard has to be given to fair market value of the facilities or the legitimate needs of the business. Simply because bank loan rate is lower, the same would not entitle Ld. AO to invoke these provisions unless it was shown that the same was excessive having regards to the fair market value. As rightly held by Ld. CIT(A), taking loans from financial institutions would involve lot of procedures and documents including pledging of properties. The loans from family members would be easy to take and no collateral security would be required. Naturally, such loans are subjected to higher risk and therefore, carry higher rate of interest. The Ld. AR has also demonstrated that these loans have been offered the same rate of interest since long time and no such

disallowance has been made in earlier years. The Ld. AR has placed on record first appellate order of the assessee for AY 1987-88 wherein the assessee had paid interest @22% and similar disallowance was made by Ld. AO. However, Ld. CIT(A) deleted the same considering the fact that the loans were available to the assessee for larger period of time. Therefore, considering all these facts, we would concur with the adjudication of Ld. CIT(A).

11. In the result, the appeal stand dismissed.

Order pronounced on 3rd April, 2024

Sd/- (MANOMOHAN DAS) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखा सदस्य / ACCOUNTANT MEMBER
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चेन्नई / Chennai; दिनांक / Dated : 03-04-2024
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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF