

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' : NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.474/DEL/2024
(Assessment Year: 2017-18)**

Satish Jain,
14, Shyam Enclave,
New Delhi – 110 092.

vs.

ITO, Ward 47 (2),
New Delhi.

(PAN : AAEPJ3137D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Shivam Malik, Advocate
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 08.04.2024
Date of Order : 12.04.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the orders of the Id. CIT (Appeals)/National Faceless Appeal Centre dated 16.01.2024 for the assessment year 2017-18.

2. Assessee has taken following Grounds of appeal :-

“1. In the facts and circumstances of the case, the Ld. CIT(Appeals) has erred in passing a non-speaking order which is against the law.

2. In the facts and circumstances of the case, the Ld. CIT(Appeals) has erred in deciding the appeal without perusing the replies submitted by the appellant during assessment proceedings as well as before him and thus ignoring vital documents such as, cash book, purchase bills, ledger and VAT returns which is a clear violation of principles of natural justice.

3. In the facts and circumstances of the case, the Ld. CIT(Appeals) has erred in confirming the action of the AO in rejecting the books of accounts by invoking the provisions of Section 145(3) of the Act without even looking at the documents on record.

4. In the facts and circumstances of the case and in law, the Ld. CIT(Appeals) has erred in confirming the addition of Rs.31,00,000/- being cash deposited in bank account without appreciating that the said cash was part of the cash account submitted with the submissions made and was sourced from sales duly accepted by VAT department.

5. In the facts and circumstances of the case and in law, the Ld. CIT(Appeals) has erred in confirming the order of the AO ignoring the position of law that provisions of Section 68 cannot be applied in respect of income from a Source which has already been taxed which would amount to double taxation

6. In the facts and circumstances of the case and in law, the Ld. CIT (Appeals) has erred ignoring the position of law that no addition u/s 68 can be made where books of account had been rejected by the AO u/s 145 (3) and again relying upon the same books of accounts for the purpose of section 68.”

3. Brief facts of the case are that assessee is engaged in the business of dry fruit, kriyana and supari under the name and style of M/s. Jain Trading Co. Having sales office at Khari Baoli, Chandni Chowk, Delhi. AO in this case made addition for entire cash deposit of Rs.31,00,000/- in the bank during demonetization period. The observations of the AO are as under:-

“6.1 Assessee has made cash sale of Rs.1,56,000/- in the month of September, 2016 and Rs.28,98,000/- in the month of October, 2016. Assessee has deposited Rs.31,00,000/- during demonetization period in the month of November, 2016.

6.2 Assessee has made purchase in the month of September and October, 2016.

6.3 When cash book of the assessee was examined it was noted that assessee has made cash sale between 03.10.2016 to 10.10.2016 and after that he has deposited cash during demonetization period on 19.11.2016.

6.4 After 10.10.2016 there is no cash sale by the assessee before 18.11.2016. It is very unusual and unrealistic conduct of the assessee.

6.5 Statement u/s 131 of the Act of assessee was recorded. In that statement assessee was asked the following questions:

"Q.9. What you have done to the cash sale you have made in the month of Sept. & Oct, 2016?

Ans. I have not deposited cash in bank account during Sept & Oct, 2016.

Q.10 Why you have not deposit the cash sale amount of Sept & Oct, 2016 to the bank account?

Ans. There was petty sale in Sept, so why not deposited in bank however on account of festival season I have not deposited the cash into the bank.

Q.11 What has happened that you have not made any cash sale after 10th Oct, 2016?

Ans. I was not well so why I was not coming to the market and this is the reason I have never not made any cash sale."

6.6 Assessee has given contrary statement above that in Q.11 he has admitted that after 10th Oct, 2016 he has not made any cash sale because he was not well and not coming to the market. But in reply to Q.No.10 he admitted that he has not deposited cash in bank on account of festival seasons. Both the statement is contrary which proves concocted cash sale booked by the assessee.

Conclusion

7. On the basis of observation drawn at Para No.6 above, assessing officer reached to a conclusion that concocted cash sale has been booked by the assessee to adjust his undisclosed income during the demonetization period. The conduct of the assessee that in the entire F.Y. 2015-16, 2016-17 & 2017-18, he has deposited cash only during demonetization period of Rs.31,00,000/- strengthen the conclusion drawn by the assessing officer.

Decision

8. In view of above facts and circumstances addition of entire cash deposit of Rs.31,00,000/- in the bank during demonetization period as being manipulated will meet the end of justice. The addition of Rs.31,00,000/- is added back to the income of the assessee u/s 68 of the I. T. Act, 1961. This addition is made in the gross profit of the assessee considering manipulation done in the cash sale. Penalty proceedings u/s 271AAC of the I. T. Act, 1961 is hereby initiated separately. It is specifically mentioned that the addition is being made u/s 115BBE of the I. T. Act, 1961.

(Addition of Rs. 31,00,000/- u/s 68 of the I. T. Act, 1961.)

9. Assessee has booked concocted cash sale which is not possible without manipulation in books of account. The books of account are hereby rejected u/s 145 of the I. T. Act, 1961.”

4. Against this order, assessee appealed before the ld. CIT (A). Ld. CIT

(A) passed an order which is rather a non-speaking order as under :-

“6.1 I have gone through the Assessment Order and submissions of the appellant. The AO has carried out additions to tune of Rs. 31,00,000/- being cash deposited during the demonetization period which was unexplained cash credit u/s 68 of the IT Act, 1961.

6.2 The AO has stated that during the course of the assessment proceedings, the appellant has deposited cash of Rs.31,00,000/- into his bank accounts during the demonetization period. The appellant was asked to furnish the explanation of the said cash deposits. In response to the same

the appellant was furnished the details before the AO. However, the details were furnished by the appellant was not enough in support of genuineness of cash deposits. Accordingly, entire cash deposits during the demonetization period to tune of Rs.31,00,000/- was treated as unexplained cash credit u/s 68 of the IT Act, 1961 and the same was added back to the total income of the appellant.

6.3 It is noted from the submissions furnished during the course of the appellate proceedings, the appellant is an individual engaged in the business of dry fruit, kriyana and supari under the name and style of MIs. Jain Trading Co. having sales office at Asia's biggest wholesale and retail dry fruit and kriyana market in Khari Baoli, Chandni Chowk, Delhi - 110006. Further the appellant has stated that cash were deposited out of cash sale proceeds during the year under consideration. However, the appellant has not furnished any documentary evidences to substantiate his claim. Therefore, the contention of the appellant is not found to be acceptable.

6.4 Hence, additions to tune of Rs.31,00,000/- being cash deposited during the demonetization period which was unexplained cash credit u/s 68 of the IT Act, 1961 by the AO is upheld.”

5. Against this order, assessee is in appeal before the ITAT. I have heard both the parties and perused the records.

6. The submissions of the Id. Counsel for the assessee read as under :-

“1. No addition can be sustained merely by comparing corresponding figures of the preceding year because the nature of business vastly differed. Trading sales commenced in Financial Year 2016-17 only, hence, the question of deposit during the previous year was immaterial.

2. It is not the case of the assessing officer that the appellant did not possess stock in his trading account. It is a settled proposition of law that once purchases have been accepted by the assessing officer, corresponding sales of trading stocks ought to be accepted.

3. In the subsequent year i.e., Financial Year 2017-18, which involved an uninterrupted period of trading, the assessee made sales

worth Rs.25,89,15,930/- and the same was deposited in the bank account, duly accepted by the assessing officer. No apprehension on cash sales and subsequent deposits in the bank account was ever casted by the revenue authorities. Therefore, the allegation of the assessing officer that no amount was deposited in the subsequent year, is incorrect.

4. The assessing officer has made the addition in the year under consideration only on surmises and conjectures. It is not the case of the assessing officer that corresponding purchases, the sales whereof have been made by the appellant in cash and deposited in bank, was still available with the appellant. This is substantiated from the fact that in subsequent year, the closing stock of the preceding year was treated as the opening stock. In a situation of no sales, as presumed by the assessing officer, the closing stock of the year under consideration would have been higher and corresponding adjustment should have been made by the assessing officer, which is not the case currently.

5. The factual scenario clearly postulates that additions made by the assessing officer, on surmises and conjectures, without any tangible evidence, and on suspicion, is impermissible in law. The ignorance of the appellant's health condition on account of him being a senior citizen also leaves much to be desired. Therefore, the addition of Rs.31,00,000/-, being cash deposits made in the bank account out of sales conducted in September and October, by wrongly construing no deposits made in the preceding year (without appreciating the change in the nature of business) deserves to be deleted.

6. It is also not out of place to mention that major kirana sales are contingent on the onset of the festive season in India. The appellant operates from Khari Baoli, which is one of the biggest wholesale markets in Asia for such items. The footfall usually begins a few weeks prior to the actual festivals. The festivities in October' 2016 began with Navratri in the first week to Dussehra, Karwa-Chauth, Dhanteras, Diwali and Bhai-Dooj till the end of the month. Considering the anticipated rush on account of such festivals, it was also sensible for the appellant to deposit the cash once festive season was over. It is henceforth contended that sales made during September and October, as claimed by the appellant and deposited in bank must be accepted.

7. It is further prayed that the cash deposits made in the bank account out of sale proceeds be treated as business receipts thus making the applicability of Section 115BBE of the Act by the assessing officer completely wrong.”

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

8. Upon careful consideration, I find that ld. CIT (A)'s order is a non-speaking one. The fact that assessee has produced books of accounts which were rejected by the AO but were not considered by the ld. CIT (A) at all. From the books of account, it transpires that when purchases and sales have been found genuine how deposit out of the cash sales can be treated as non-genuine. In this regard, the contention of the ld. Counsel for the assessee has cogency which needs to be considered at the level of ld. CIT (A). Hence, in the interest of justice, I remit the issue to the file of ld. CIT (A). Ld. CIT (A) should consider the issue afresh after providing an opportunity of being heard to the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 12th day of April, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 12th day of April, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**