

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 439/Ind/2023
Assessment Year: 2017-18

Auto House Piplani, Auto House Indian Oil Petrol Pump, Piplani, Raisen Road, Bhopal	बनाम/ Vs.	ACIT/DCIT, 4(1), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN : AAQFA1942F		
Assessee by	Ms. Nisha Lahoti, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.04.2024	
Date of Pronouncement	22.04.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 07.09.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 31.12.2019 passed by learned ACIT/DCIT-4(1), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

- "(1) On the facts and in the circumstances of the case and in law the order passed by the Ld. CIT(A) is an injudicious order. The said order has

been passed in not following the principles of natural justice and without giving meaningful to the assessee hence same is bad in law and therefore be quashed.

2. On the facts and in the circumstances of the case and in law, the decision of Ld. CIT(A) is neither lawful nor justified in sustaining of addition of Rs. 8,35,000/- for the cash deposited during demonetization period in the bank account. Hence, the said unlawful and unjustified addition of Rs. 8,35,000/- be kindly deleted.
3. On the facts and in the circumstances of the case and in law the decision of Ld. CIT(A) is neither lawful nor justified in sustaining the GP addition of Rs. 11,12,803/-. Hence, the said unlawful and unjustified addition of Rs. 11,12,803/- be kindly deleted.
4. On the facts and in the circumstances of the case and in law, the invocation of section 115BBE is neither justified nor lawful, hence the said invocation be kindly quashed and it be held that the provision of section 115BBE are not applicable.
5. On the facts and in the circumstances of the case and in law, the levy of interest u/s 234B & 234C are unlawful and hence be quashed."

2. This is the 2nd round of litigation before ITAT. The background facts leading to present appeal are such that the assessee is a partnership firm engaged in the business of diesel, petrol, etc. as an authorized distributor of IOC Limited. For AY 2017-18 under consideration, the assessee filed return of income on 31.10.2017 alongwith audited financial statements declaring a total income of Rs. 17,92,120/-. The case was taken up for scrutiny assessment and the AO past assessment order u/s 143(3) on 31.12.2019 a total income of Rs. 39,39,923/- after making twin additions, namely (i) addition of Rs. 10,35,000/- on account of unexplained deposits in bank account during demonetization period, and (ii) addition of Rs. 11,12,803/- on account of gross profit. Aggrieved, the assessee carried matter in first appeal. The CIT(A) passed ex-parte order dated 30.03.2022 dismissing the appeal of assessee and thereby confirming the additions made by AO.

Against order of CIT(A), the assessee filed next appeal ITA No. 107/Ind/2022 to ITAT, Indore whereupon the ITAT, vide order dated 03.02.2023, remanded matter back to CIT(A) for adjudication afresh. The first round ended here. Pursuant to ITAT's order, the CIT(A) passed new order dated 07.09.2023 wherein a part relief of Rs. 2,00,000/- was granted out of the addition of Rs. 10,35,000/- made by AO on account of unexplained deposit in Bank A/c. Thus, after new order of CIT(A), the addition of Rs. 8,35,000/- on account of unexplained deposits in bank account and addition of Rs. 11,12,803/- on account of gross profit still subsist. The assessee is still aggrieved by CIT(A)'s order confirming these additions and has come in this appeal. Accordingly, this is the second round before us.

Ground No. 1:

3. This ground is general and no specific submission is made by either side. Therefore, it does not require any specific adjudication from us.

Ground No. 2:

4. In this ground, the assessee challenges the addition of Rs. 8,35,000/- on account of unexplained deposit in Bank A/c.

5. The AO has made this addition treating the deposit of Rs. 8,35,000/- made by assessee in Bank A/c on 03.12.2016 during demonetization period as unexplained. Ld. AR for assessee submitted that the assessee is a partnership firm engaged in the business of petrol, diesel, etc. and the

impugned deposit was made in the normal course of business, which is duly recorded in audited cash-book of assessee. Ld. AR drew our attention to the working sheets containing monthwise data of cash balance, sales and cash deposits made in bank a/c complied by assessee for the previous year 2016-17 relevant to AY 2017-18 under consideration as well as immediately preceding year, copies whereof have been filed to AO and also filed in paper-book, to show that the assessee is having a consistent pattern of depositing business cash in bank a/c and there is nothing unusual in the impugned deposit of Rs. 8,25,000/- made by assessee. She submitted that the sum of Rs. 8,25,000/- is also not a very high sum so as to warrant any suspicion. She submitted that even during demonetization period, sale of petrol and diesel was permitted in cash by Govt. of India which is an important factor and must be given due regard. Making these submissions, Ld. AR contended that the AO has wrongly treated the impugned deposit as not being explained and has incorrectly made addition which must be deleted.

6. Per contra, Ld. DR for revenue drew us to Para No. 4 of assessment-order to show that the AO has categorically noted that the assessee failed to furnish his cash-book despite a specific request made by AO vide notice dated 21.12.2019 to furnish cash-book on 23.12.2019. Ld. DR also carried to Para No. 6.9 of the order of first-appeal wherein the CIT(A) has also recorded the same finding that the assessee did not file cash-book even during first-appeal. Ld. DR contended that when the assessee has not

furnished cash-book despite required by AO or even during first-appeal, how can the impugned deposit be treated as having been explained?

7. We have considered rival submissions of both sides and also perused the orders of lower authorities. The controversy here relates to the source of deposit in bank a/c. Admittedly, the assessee is engaged in the business of petrol, diesel etc. and there seems a strong merit in the claim of assessee that the impugned deposit in bank a/c was made from cash generated from sale of petrol, diesel, etc. permitted during demonetization period. But, however, both of the lower authorities have made a concurrent finding that the assessee has not produced cash-book and simply filed month-wise data of cash-balance, sales, etc. The assessee has also made following submission to CIT(A) which is noted at Page No. 5 in the order of first-appeal:

"3.2) the assessee submits that the notice u/s 142(1) dated 21.12.2019 issued by ACIT-4(1) Bhopal at 08:32 PM on 21.12.2019 at the counsel mail id. The said day 21.12.2019 was Saturday and the notice since sent at 08:32 PM, the office of the counsel was closed. Next day was Sunday and therefore on 23.12.2019 the email appears to have escaped the notice of the counsel because he could not see the mail due to his preoccupation as it was a time barring period of assessments and therefore the assessee remained incommunicado."

Thus, it is undisputably clear that the assessee has not produced cash-book to prove the source of deposit. From submission of assessee before CIT(A), it is also manifest that the AO has not given sufficient time/opportunity to assessee to produce cash-book. Faced with this situation, we feel it appropriate to remand this issue back to the file of AO to enable the

assessee to produce cash-book to show that the impugned deposit in bank a/c is duly recorded therein and also the AO to make an apt adjudication after consideration of cash-book in accordance with law. We order accordingly.

Ground No. 3:

8. In this ground, the assessee challenges the addition of Rs. 11,12,803/- on account of gross-profit.

9. The AO has made this addition in Para No. 5 of assessment-order. Precisely, the AO noticed difference in the figure of purchase recorded in audited P&L A/c and the figure of purchase reflected by Purchase Ledger A/cs produced by assessee during scrutiny proceeding. When the AO show-caused assessee in this regard and scrutinized the details submitted by assessee in response, he noted that as per "Purchase Accounts Group Summary", a sum of Rs. 83,16,200/- was received by assessee as dealer's commission for sale of petroleum product. From there, the AO framed a view that the dealer's commission should be the gross profit of assessee but the assessee had shown gross profit of Rs. 72,03,397/- only in audited P&L A/c. Accordingly, the AO made addition of differential of Rs. 11,12,803/- (83,16,200 – 72,03,397) on account of lower gross-profit. During first-appeal, the CIT(A) upheld AO's addition.

10. Before us, Ld. AR for assessee made two-fold submissions:

- (i) It is submitted that the assessee is engaged in trading of petrol and diesel wherein 'evaporation loss' occurs. Our attention is drawn to Page 20-23 of Paper-Book where the working sheets of evaporation loss are filed according to which there was evaporation loss of Rs. 11,12,304/- during the year. Ld. AR submitted that the evaporation loss suffered by assessee is in line with the permissible limits prescribed in "Marketing Discipline Guidelines" issued jointly by all petroleum companies such as Bharat Petroleum, Indian Oil and HP, copy of guidelines have been filed at Page 31-33 of Paper-Book. Ld. AR submitted that the AO has worked out lower gross-profit at Rs. 11,12,803/- which is approximately equal to the permissible evaporation loss of Rs. 11,12,304/- as per Guidelines. Therefore, the gross profit declared by assessee is not lower; in fact it is proper and must be accepted.
- (ii) Secondly, it is submitted that even otherwise, the books of account of assessee have been duly audited and the auditors have not pointed out any defect. The assessee has filed audited Trading A/c, copy at Page 14 of Paper-Book, and the AO has not found any discrepancy in any of the line items debited/credited to Trading A/c, namely opening stock, purchase, sales and closing stock. Further, the assessee has filed full details of quantities and values of all line items i.e. opening stock, purchase, sales and closing stock to AO, copies filed at Page 15-19 of Paper-Book and the AO has not found any discrepancy

therein. Despite this, the AO has picked a figure of Rs. 83,16,200/- credited by assessee in "Purchase Accounts Group Summary" and treated the same as gross-profit. Ld. AR submitted that the AO is grossly wrong in treating the figure of Rs. 83,16,200/- as gross-profit. That apart, the AO is also at a mistake in branding it as 'dealer's commission for sale of products' whereas it was 'dealer's commission/ rebate received from IOC on purchase of petroleum products' which IOC has adjusted in purchase amount payable by assessee. Therefore, it reduces cost of purchase and the assessee has credited it in Purchase A/cs and ultimately debited 'net purchase' to Trading A/c; this way the impugned amount has already factored in gross-profit reported by assessee. The assessee also made this very submission in first-appeal as re-produced by CIT(A) in Para No. 4.1 of appeal-order and also analysed in Para 6.14 of appeal-order but the CIT(A) has ultimately not given weightage to assessee's submission while passing order.

11. Per contra, Ld. DR for revenue drew our attention to Para 6.15 of the order of first-appeal where the CIT(A) has categorically noted that the assessee has not filed documentary evidences to prove his stand. Ultimately, the CIT(A) has, in Para 6.16, upheld AO's addition by specifically observing that the claim of assessee is not acceptable until it is demonstrated with documentary evidences.

12. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. The controversy relates to the addition made by AO on account of lower gross-profit. Admittedly, the AO has picked a figure of Rs. 83,16,200/- credited in "Purchase Accounts Group Summary" filed by assessee during scrutiny-proceeding; believed the same as commission received by assessee from IOC on sale of products and concluded that the assessee's gross-profit should be Rs. 83,16,200/- as against gross-profit of Rs. 72,03,397/- declared by assessee. This way, the AO made addition of differential. Thus, in the first instance, it is clear that the AO has made addition in a very summary manner just picking a figure without considering full picture of all elements contributing to gross-profit, namely opening stock, purchase, sales, closing stock. One can hardly dispute that the gross-profit is a combined result of all elements and cannot be a figure of impugned commission. Then, the assessee also claims that impugned sum is not the commission given by IOC on sale of products; it was basically a dealer's commission/rebate relatable to purchase and the same has already factored in gross-profit declared by assessee. The CIT(A) has rejected this very claim of assessee due to absence of documentary evidences from assessee's side. That apart, the assessee is also raising another point to show that the difference in gross-profit alleged by AO is broadly reconciled by the 'evaporation loss' having occurred in assessee's line of business. The assessee claims that the 'evaporation loss' is within the

permissible limit prescribed by petroleum companies. The working sheets of 'evaporation loss' have also been filed in the paper-book filed by assessee under a certificate that these documents were available before lower-authorities. This point of 'evaporation loss' is although nowhere discussed in the orders of lower-authorities but merits attention. Therefore, keeping in view the points raised by assessee which are quite substantial but which have not been accepted or analysed at lower-level for lack of complete documentary evidences, we think it appropriate to remand this issue also to the file of AO for an in-depth adjudication. Needless to mention that the AO shall give full opportunity to assessee to explain his stand. The assessee shall also submit all evidences and details to prove his stand. Thereafter, the AO shall take a final call on the issue in accordance with law. We order accordingly.

Ground No. 4 & 5:

13. Ground No. 4 relating to application of section 115BBE and Ground No. 5 relating to levy of interest u/s 234B & 234C are consequential to the preceding grounds. Since we have already remanded preceding grounds to the file of AO for adjudication afresh, it would be unnecessary to go into Ground No. 4 & 5 at this stage. Accordingly, these grounds are kept open to be looked into by AO, in case of necessity, while passing order.

14. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 22.04.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 22.04.2024.
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore