

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.3748/DEL/2023
(Assessment Year: 2017-18)**

ITO, Ward 51 (1),
Delhi.

vs.

Aditi Gems N Jewellery,
29/3250, Beadonpura,
Karol Bagh,
Delhi – 110 005.

(PAN : AANFS3291Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA
Shri Satyjeet Goyal, CA
REVENUE BY : Shri Amit Katoch, Sr. DR

Date of Hearing : 02.05.2024
Date of Order : 09.05.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 06.11.2023 for the assessment year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. Whether on the facts and circumstances of the case, the Ld. CIT (A) erred in deleting the additions of Rs.2,74,01,660/- made by AO u/s 68 of the Income Tax Act, 1961.

2. Whether on the facts & under the circumstances of the case, the Ld. CIT (A) is justified in holding that the evidence collected by the AO during the assessment proceeding were merely conjecture and surmise

without appreciating that the AO had concrete evidence to prove that the cash sales shown by the assessee are nothing but a bogus source to justify the cash deposited in bank account during demonetization period.

3. Whether on the facts & under the circumstances of the case, the Ld. CIT (A) is justified in holding that the AO has not rejected the books of accounts without appreciating that the rejection can be apparent or it can be implied and the order of AO clearly suggests that the book results were impliedly not accepted by the AO.”

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of manufacturing and trading in jewellery. The return of income for the year under consideration was filed on 31.10.2017 declaring income of Rs.19,30,260/-. The case was selected for regular scrutiny assessment vide notice u/s 143(2) of the Income-tax Act, 1961 (for short ‘the Act’) dated 30.09.2018 and the assessment was completed vide order u/s 143(3) of the Act dated 31.12.2019 after making addition to the extent of Rs.2,74,01,660/- u/s 68 of the Act on the alleged ground of bogus cash sales booked during the period 01.10.2016 to 08.11.2016 i.e. period immediately before announcement of demonetization.

3.1 The detailed observations of the AO read as under :-

“(i) The assessee has contended that the sales of the year under consideration should not be compared with the sales of F.Y. 2015-16 as there was decline in sales in this particular year due to strike in jewellery market. It has further been contended that the sales of the year should not be compared with the sales of F.Y. 2015-16 as the assessee closed his business from Delhi and further there was financial crunch in the market due to demonetisation and the people were spending cash for daily needs items only. As regards increase in sales during the current F.Y. it has been submitted that there were various festivals during the month of October 2016 and also the wedding season started from 10.11.2016 and thus the sales increased in the month of October & November 2016. The assessee has also furnished copies of newspaper reports in support of his contention. From the above, it appears that the assessee has tried to convey that the sales reported in the month of October &

November 2016 (upto 08.11.2016) is a one time event in its history of sales and purchase. However, this is not the case. The festival seasons and upward trend and downtrend happens every year in the business. It cannot happen that the sales in a particular year cannot be compared with any other year. Relying on the newspaper reports cited by the assessee himself, it is evident from the newspaper report dated 18.10.2017 that though the gold sales has dropped in the year to 30% in festive season, the demand for diamond jewellery has rose during the year. The assessee is trading in gold as well as diamond jewellery and thus the contention that the sales decreased in subsequent year cannot be accepted. Besides, it is also seen from the ITR for AY 2016-17 that the assessee firm has achieved sales turnover of Rs.19,29,59,989/- despite there being strike in jewellery business during this year which is more than the sales turnover of the year under consideration. Thus, the contention of the assessee that the sales of the year cannot be compared with previous and subsequent year cannot be accepted. (ii) The contention that the sales have been duly reported in VAT returns also does not support the assessee's huge cash sales as except VAT return of first quarter of FY 2016-17, all the VAT returns have been submitted after the demonetisation announced by the Government of India.

- (ii) It is also seen that the assessee is not in the habit of maintaining huge cash in hand in any of the months during previous and also subsequent years. While the maximum cash in hand during F.Y. 2015-16 is Rs.31,38,083/- during the month of August 2015, the same is Rs.38,55,128 during the month of March 2018 in F.Y. 2017-18. The cash in hand that too more than Rs. 3,00,00,000/- is seen only during the year under consideration which shows that the cash book has been manipulated to accommodate the unaccounted cash available with the assessee.
- (iii) It is seen that the assessee during the year has maintained books and the same has also been audited. Notice u/s143(2) for AY 2017-18 was issued to the assessee during the month of September 2018 and after that the notices are being issued from this office since 19.06.2019. It has nowhere been brought on record by the assessee as to what prevented it to submit the complete details of sales and purchases which were being sought to examine the veracity of submissions made. Non furnishing of complete details is clearly an attempt to stall the imminent verification by the department and thus the cash sales so booked by the assessee cannot be accepted, especially when the circumstantial evidences do not support the assessee.

12. In view of the above mentioned facts, the entire cash sales so disclosed by the assessee cannot be treated as genuine. In this regard, the average sales of the assessee in F.Y. 2015-16 & 2016-17 & 2017-18 is analysed and bogus cash sales so booked during the month of October & November 2016 (upto 08.11.2016) is worked out as under:

(a)	Cash Sales shown during the period 01.04.2015 to 30.09.2015 (183 days)	3,01,90,616	
(b)	Cash Sales shown during the period 01.10.2015 to 08.11.2015 (39 days)	46,68,118	
	Cash Sales shown during the period 01.04.2015 to 30.09.2015 (222 days)	30190616 + 4668118	3,48,58,734
(c)	Cash Sales shown during the period 01.04.2016 to 30.09.2016 (183 days)	87,79,106	
(d)	Cash Sales shown during the period 01.10.2016 to 08.11.2016 (39 days)	3,34,50,475	
(e)	Cash Sales during the period 01.04.2017 to 30.09.2017 (183 days)	86,64,758	
	Cash Sales during the period 01.10.2017 to 08.11.2017 (39 days)	44,97,450	
(f)	Cash Sales during the period 01.04.2017 to 08.11.2017 (222 days)	86,64,758 + 44,97,450	91,14,508
(g)	Average of Cash Sales shown during the period 01 st April to 08 th November of F.Y. 2015-16 & 2017-18 (for 222 days)	(3,48,58,734 + 91,14,508)/ 12	2,19,86,621
(h)	Average of cash sales for 39 days	(2,19,86,621 /222) 39	38,62,514
(i)	Excess of cash sales booked in the period 01.10.2016 to 08.11.2016 over the average cash sales of F.Y. 2015-16 & 2016-17 & 2017-18 as worked out in Col. (f) above.	(3,34,50,475 - 38,62,514)	2,95,88,231

13. It is apparent from the above that the assessee has booked excess cash sales which is bogus cash sales during the period 01.10.2016 to 08.11.2016 amounting to Rs.2,95,88,231/-. As the assessee has shown this much amount of cash sales in its books and has also disclosed Gross Profit @ 7.39%, the same is reduced from the excess sales reported during the period. Thus, the amount of Rs.2,74,01,660/- (2,95,88,231- 7.39% of 2,95,88,231) is treated as bogus sales and added u/s 68 r.w.s. 115BBE of the Act for the year under consideration.”

3.2 The crux of the AO's finding in this regard read as under :-

- (i) that comparative analysis figures of sales in the year under consideration with FY 2015-16 and FY 2017-18 reveals that there is huge increase in the figure of cash sales in the FY 2016-17;
- (ii) that except VAT return of first quarter, all the VAT returns have been submitted after demonetization;
- (iii) that assessee is not maintaining huge cash in hand in FY 2015-16 and FY 2017-18, however, in the year under consideration, the assessee had cash in hand of more than Rs.3 cr which shows manipulation of cash book;
- (iv) that complete details of sales and purchases were not furnished. Non furnishing of complete details is clearly an attempt to stall verification. Only details of sale and purchase above Rs. 5 lacs were furnished. Total sales and purchases were not reconciled with corresponding figures in ITR; and
- (v) ultimately, the assessing officer based on average cash sales figures of FY 2015-16 and FY 2017-18, reworked average cash sales for the period of 39 days between 01/10/2016 to 08/11/2016 and considered addition in respect of balance cash sales u/s 68.

4. Against the above order, assessee appealed before the Id. CIT (A). Assessee also submitted additional documents. Ld. CIT(A) called for a remand report also. Ld. CIT (A) deleted the addition by observing as under:-

“7.2.5 It is noticed that the AO made addition of Rs.2,74,01,660/- on account of cash deposited, claimed to be out of the sales which are accounted for in the regular books of accounts during the year relevant to the assessment year under consideration. In the present case, the AO has

not brought any material on record to substantiate that the amount received by the assessee by selling the jewellery I goods out of the opening stock and the purchases was utilised elsewhere and not for depositing in the bank account. In this case the opening stock, purchases and the closing stock has not been doubted, no inflated purchases were found or suppressed sales were noticed during the course of assessment proceedings. In the instant case the assessee maintained the proper books of account in regular course of business which were duly audited by the independent Chartered Accountant u/s 44AB of the Act, all the sales and purchase and stocks were recorded in the books of account which had not been doubted by the AO. The sales shown by the assessee had been accepted by the Vat/Sales Tax department, the book result shown by the assessee were in the same line as had been accepted by the AO in the preceding years, the cash sales made by the assessee had been credited in the books of account and no defect was pointed out in the proper books of account maintained by the assessee in the regular course of business and nothing is brought on record to substantiate that the sales from 01.10.2016 to 08.11.2016 were not made, out of the existing stock available with the assessee. From the analysis of the closing stock for the said period, it is evident that the appellant has sufficient stock-in-hand to justify sales. No discrepancy in this regard has been noted by the AO. The inference in this regard is that the quantitative details have been accepted. Further, during the course of the assessment proceedings, appellant filed voluminous details such as copies of bank statements and source of deposit therein, which was squarely attributed to cash sales effected; Details of cash deposited for the FY 2015-16, 2016-17 and 2017-18; Details of purchases, gross sales and cash deposit; Cash book. Therefore, from the above, it is noted that neither the A.O pointed out any shortage in the closing stock vis-a- vis the sales effected, nor any discrepancy in the information submitted before the income tax and the VAT authorities. Similarly from the analysis of GP ratio, nothing adverse is inferred. In fact, it is also not in dispute that the A.O also has accepted sales figures and the extrapolation by AO is based on the sales recorded by the appellant in its books. What has been estimated is the quantum of cash transaction which has been effected vis-a-vis the total turnover of the appellant between two corresponding periods. In the present case the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts which has not been disputed by the AO and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO is not justified. In the context of the above facts, it would be instructive to analyze various judicial pronouncements on the subject, having a bearing on the facts of the case.”

4.1 Ld. CIT (A) referred to certain case laws as under :-

- (i) Hon’ble Delhi High Court in the case of Agson Global (P.) Ltd. order dated 19.01.2022;
- (ii) Hon’ble Patna High Court in the case of Lakshmi Rice Mills ;

- (iii) Hon'ble Delhi High Court in the case of Akshit Kumar;
- (iv) ITAT, Visakhapatnam Bench in the case of ACIT vs. Hirananna Jewellers (2021) 128 taxmann.com 291/189 ITD 608; and
- (v) ITAT, Delhi in the case of Singhal Exim Pvt. Ltd. vs. ITO – ITA No.6520/Del/2018 order dated 12.04.2019.

4.2 Thereafter, ld. CIT (A) concluded as under :-

“7.2.14 In the present case also the AD did not question the sales figure and accepted books of account. In the absence of any adverse finding with respect to the acceptability/veracity of books of account, the action of AO cannot be sustained. Making an addition u/s 68 of an amount, which is already accounted for as sales would be tantamount to double addition. The appellant has established existence of adequate stock to effect sales. In the absence of any adverse findings by the AO, addition made, purely based on the principle of estimation cannot be approved of. The action of the AO in arriving at the conclusion that the appellant failed to discharge the onus of proving the genuineness of the cash deposited in the bank account amounting to Rs.2,74,01,660/- u/s 68 of the Act is erroneous. The AO's method of arriving at his conclusions is not supported by evidence adduced by the appellant, both during the course of assessment as well as appellate proceedings. Moreover, the appellant's contention is backed by judicial pronouncements, as discussed hereinabove. So, respectfully following the aforesaid referred to orders by the various Hon'ble High Courts and the Coordinate Benches of the ITAT, I am of the view that the impugned addition made by the AO is not justified, accordingly the same is deleted. The AO is directed to take consequential action at the time of giving effect.”

5. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

6. We find that ld. CIT (A) has passed a reasonable order which is self-explanatory. The detailed findings of ld. CIT (A) have already been mentioned above. The crux of the ld. CIT (A)'s findings is as under:-

- (i) that the AO has not disputed the quantitative details of stock mentioned in the tax audit report;

- (ii) that the assessee has furnished complete details of purchase and sales and the allegation of the AO is unjustified;
- (iii) that the sales recorded in the books have been accepted by the VAT department and the trading result has also been accepted by the AO. The AO has not pointed out any specific defect;
- (iv) that the assessee has sufficient stock in hand to justify the cash sales and no discrepancy has been found by the Assessing Officer;
- (v) that the AO has found nothing adverse in the GP ratio for the year under consideration;
- (vi) that there is nothing on record to show that the cash generated from cash sales was utilized somewhere else.
- (vii) that the assessing officer has not disputed or disturbed the figure of sales and closing stock and as such the cash sales cannot be disputed and treated as unexplained cash deposit; and
- (viii) relied upon various case laws including decision of ITAT (Vizag) in the case Hirapanna Jewellers as well as Delhi High Court in the case of Agson Global.

7. We find that ld. CIT (A) has passed a well-reasoned order which does not require any interference on our part. Hence, we uphold the same.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 9th day of May, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

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

**Dated the 9th day of May, 2024
TS**

Copy forwarded to:

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

**AR, ITAT
NEW DELHI.**