

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 210/Kol/2024
Assessment Year: 2017-18

<p style="text-align: center;">Sandip Saraf C/o. Subash Agarwal & Associates, Advocates Siddha Gibson 1, Gibson Lane Suite 213, 2nd Floor Kolkata - 700069 [PAN : ANNPS0216L]</p>	Vs	<p style="text-align: center;">Income Tax Officer, Ward - 50(3), Kolkata</p>
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddharth Agarwal, Advocate
Revenue by :	Shri Swapan Kumar Bera, JCIT, Sr. D/R

सुनवाई की तारीख /Date of Hearing : 18/04/2024
घोषणा की तारीख /Date of Pronouncement: 08/05/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "ld. CIT(A)") dt. 21/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:-

"1. For that on the facts and in the circumstances of the case, Ld. CIT(A) ought to have held that the A.O. was not justified in rejecting the assessee's books of accounts u/s 145(3) of the Act.

2. For that the Ld. CIT(A) was not justified in confirming the addition of Rs.30,40,010/- made by the A.O. by wrongly treating the cash sales as unexplained money u/s 69A of the Act.

3. *The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing."*

3. Facts in brief are that the assessee is an individual derives income from business. Income of Rs.15,55,810/- declared in the returned income for Assessment Year 2016-17 furnished on 16/10/2017. Case selected for scrutiny followed by validly issuing and serving of notice u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings, the Id. Assessing Officer noticed that the assessee had deposited cash of Rs.38,50,000/-, during demonetisation period. The assessee filed complete details of cash book as well as details of sales made during the alleged period wherein VAT was charged on each of the sales. The Id. Assessing Officer did not find the assessee's books of accounts as reliable and rejected the same u/s 145(3) of the Act, however, he allowed the deduction by giving benefit of opening cash in hand of Rs.8,09,990/- and for the remaining amount of Rs.30,40,010/-, he did not accept the sale of cash sales during the year and made addition of unexplained money u/s 69 of the Act and assessed income at Rs.45,95,820/-.

3.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) and again filed complete details of purchase and sales, VAT registration certificate, copies of sample bills, cash book but did not find any relief from the Id. CIT(A).

4. Aggrieved, now the assessee is in appeal before this Tribunal.

5. The Id. Counsel for the assessee referring to the various documents filed in the paper book containing 99 pages furnished on

12/04/2024 submitted that the assessee is dealing into chemicals, maintaining stock records, regularly filing VAT returns, no discrepancy has been noticed in the purchase for the year but the ld. Assessing Officer has doubted the sales. He submitted that the source of alleged cash deposit is cash sales carried out under the regular course of business and the same should accepted.

On the other hand, the ld. D/R supporting the order of the lower authorities, stated that the assessee is not doing cash sales frequently in the past. Only during the demonetisation period, cash sales have been made. All the invoices are of value less than Rs. 50,000/- and no details of purchases are mentioned. He stated that the genuineness of sales is doubtful as the assessee has not furnished any proof of transportation of goods sold during the demonetisation period. He stated that the sales are not genuine and, therefore, addition for unexplained money has rightly been confirmed by the ld. CIT(A).

6. We have heard rival contentions and perused the material placed before. The assessee has challenged the finding of the ld. CIT(A) confirming the addition for unexplained money u/s 69A of the Act at Rs. 30,40,010/-. We observe that during demonetisation period from 09/11/2016 to 13/12/2016, the assessee deposited Rs.38,50,000/- in the four bank accounts of which two were held with HDFC Bank and one each in Punjab National Bank and ICICI Bank. Now, the cash sales during the period 25/10/2016 to 31/10/2016, is Rs.9,82,450/- and from 01/11/2016 to 08/11/2016 is Rs.18,06,181/-. Further we observe that the assessee is maintaining proper books of accounts which includes

quantitative records, purchase and sale register, cash book etc. As on 30/09/2016, cash in hand available is Rs.8,22,138/-. Certain cash sales were made during the month of October, 2016 and thereafter in November, 2016. The alleged cash deposit are duly recorded in the cash book and there is no negative cash balance at any point of time. We further observe that the ld. Assessing Officer has not found the books of account maintained by the assessee as reliable and has rejected the book results but ironically he has allowed the set off of the opening cash in hand as on 01/04/2016 which means he was satisfied with the opening cash balance. Further, the ld. Assessing Officer has only made the addition for the alleged cash deposited during demonetisation period but for the remaining transactions carried out by the assessee, the ld. Assessing Officer has accepted the book results. It thus means that action of the ld. Assessing Officer of rejecting the book results was not justified.

6.1. Now, so far as the genuineness of the sales is concerned, we notice that the assessee is duly registered with the VAT authorities. As per the purchase register, from 01/04/2016 onwards, till the close of year, regular purchases have been made from VAT dealers and payments have been made through banking channel. Sales are also made regularly and the turnover of the assessee during the year is Rs.6.09 Crores and the purchases are Rs.5.81 Crores (approx.). Now, considering the alleged cash deposit, the turnover of the assessee is huge and the said turnover has not been disputed. The only reason for disputing the cash sales is that, the assessee ultimately does not make sales in cash and that

too each invoices having amount less than Rs.50,000/-. We do not find any merit in this observation of the lower authorities because, there is no bar under the law to effect cash sales subject to the availability of goods/stock in hand with the assessee. Complete quantitative records are maintained and the goods sold during the demonetisation period in cash, are supported by the purchases made from VAT dealers and subsequently, VAT has been charged on the sales also. When the demonetisation scheme was announced it was quite evident that all persons wanted to utilize their cash in hand and the same would have been the case of the assessee where the buyers approached the assessee for purchase of goods in cash and as a prudent business-man, assessee did not want to lose this opportunity.

7. Under these given facts and circumstances, we fail to find any reason to doubt the genuineness of the cash sales made by the Id. Assessing Officer during the demonetisation period and are inclined to hold that the assessee has successfully explained the source of alleged cash deposit. Thus, the finding of Id. CIT(A) is set aside and the addition of Rs. 30,40,010/- made u/s 69 of the Act is deleted. Ground Nos. 1 & 2 raised by the assessee are allowed.

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

Order pronounced in the Court on 8th May, 2024 at Kolkata.

Sd/-

(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 08/05/2024

Sd/-

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata