

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2152/DEL/2023[A.Y. 2017-18]

The Dy.C.I.T
Central Circle - 13
New Delhi

Vs.

Magic Auto Pvt Ltd
7/56, Desh Bandhu Gupta Road
Karol Bagh, New Delhi

PAN - AAACM 4873 C

CO. No. 96/DEL/2023
[A/o ITA No. 2152/DEL/2023[A.Y. 2017-18]]

Magic Auto Pvt Ltd
7/56, Desh Bandhu Gupta Road
Karol Bagh, New Delhi

Vs.

The Dy. C.I.T
Central Circle - 13
New Delhi

PAN - AAACM 4873 C

(Applicant)

(Respondent)

Assessee By : Shri Salil Kapoor, Adv
Shri Sumit Lal Chandani, Adv
Shri Shivam Yadav, Adv

Department By : Shri Rajesh Kumar Dhaneshta, Sr. DR

Date of Hearing : 24.04.2024
Date of Pronouncement : 15.05.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue and cross objection by the assessee are preferred against the very same order of the Id. CIT(A)-26, New Delhi dated 19.05.2023 pertaining to A.Y. 2017-18.

2. The grievances raised by the Revenue read as under:

“(i) Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition of Rs.2,93,07,500/- made by AO on the basis of unexplained cash deposited in the bank account of the assessee despite the fact that assessee had failed to provide satisfactory explanation about the source of cash deposited during the assessment proceedings.

(ii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in comparing only cash deposited into the bank account to cash sales made by the assessee for both the F.Y. 2015-16 and F.Y. 2016-17 and ignoring the fact that there were abrupt changes in cash sales & cash deposited in F.Y. 2016-17 with respect to F.Y. 2015-16.

(iii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring that the assessee has not disclosed any cash deposited in the ITR for the year under consideration, which

proves that the assessee company has intentionally submitted wrong information to escape tax liability on cash deposited during demonetization period.

(iv) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in ignoring that the assessee has not submitted any evidence like customer name, customer I address, PAN of the parties from whom cash has been received, items sold in cash, reconciliation of monthly turnover with indirect taxes return-to prove the cash sales made , during the year under consideration.

(va) Whether on law and facts of the case the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.

(vb)The appellant craves leave to add, alter or amend any/all or the grounds"

3. Briefly stated, the facts of the case are that the assessee company is in the business of selling cars, servicing and repairing case of Maruti Brand alongwith purchasing and selling pre-owned cars under "True Value" brand of Maruti Suzuki India Ltd.

4. The assessee filed its Return of Income electronically on 2.11.2017 declaring total income of Rs. 5,39,31,900/-. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

5. The assessee company, thereafter filed revised return of income at Rs. 5,39,28,160/- on 24.05.2018. During the course of assessment proceedings, it was noticed that the assessee had made cash deposit amounting to Rs. 6,05,03,262/- during the demonetization period.

6. The assessee was asked to furnish relevant details alongwith comparative month-wise details of cash deposits and cash/credits, sale/purchase of A.Y 2016-17 and 2017-18.

7. The assessee submitted reply on different dates on ITBA portal.

8. Reply of the assessee did not find any favour with the Assessing Officer who observed that despite having considerable amount of cash in hand on different dates, the assessee had not deposited any cash that was claimed to be available in his hand as per his cash book and the source explained by the assessee is nothing but colorable device trying to explain the huge deposits.

9. In view of the abnormal increase in the alleged cash receipts, invoking the provisions of section 145(3) of the Act, the Assessing Officer rejected the cash book furnished by the assessee. Relying upon

judicial decisions in the case of CIT Vs. Durga Prasad More 821/540 [SC] and Sumati Dayal Vs. CIT 214/801 [SC], the Assessing Officer allowed benefit to the extent of average monthly balance of cash in hand Rs. 2,62,75,000/- and balance amount of Rs. 2,93,07,500/- being cash deposits made by the assessee was disallowed treating it as undisclosed income of the assessee/s 68 of the I T Act. Accordingly, the Assessing Officer computed the total income of the assessee at Rs. 8,32,35,660/-.

10. Aggrieved by this, the assessee went in appeal before the Id. CIT(A).

11. The Id. CIT(A), after careful consideration of the facts and material on record, and after analyzing the month-wise comparative details of cash deposits, assessee's turnover, the specific circumstances and nature of business of the assessee in the light of the evidences supplied by the assessee, deleted the addition by concluding as under:

"8.2 I have considered the submissions and facts of the case. The appellant is in the business of selling cars, servicing and repairing cars of Maruti Brand alongwith purchasing and selling pre owned cars under

True Value brand of Maruti Suzuki India Ltd.. Return was filed by the appellant at an income of Rs. 5,39,28,160/- and assessment was completed at an income of Rs. 8,32,35,660/- after making addition of Rs. 2,93,07,500/- u/s 68 of the IT Act, 1961 on account of unexplained deposit in the bank account. The appellant submitted cash sales and cash deposited chart which is in the below mentioned table:-

Month	Opening Balance	Cash Receipts	Cash Deposited in Bank	Cash transferred to Petty Cash	Interunit Transfers	Cash Withdrawn from Bank	Payments Made	Closing Balance
Apr-16	1,14,59,660	16,46,41,434	15,14,31,611	-	-	15,10,887	1,30,68,166	1,31,12,204
May-16	1,31,12,204	15,66,87,846	13,59,79,427	-	-	77,816	1,53,40,110	1,85,58,329
Jun-16	1,85,58,329	9,11,38,392	7,39,88,703	-	-	7,80,592	1,26,48,077	2,38,40,533
Jul-16	2,38,40,533	11,86,87,806	9,53,48,327	-	-	1,29,123	1,34,37,913	3,38,46,222

Aug-16	3,38,46,222	10,64,69,535	8,61,20,839	-	-	98,059	1,61,61,215	3,81,31,762
Sep-16	3,81,31,762	9,38,06,575	7,27,95,140	-	-	-	1,41,66,625	4,49,76,572
Oct-16	4,49,76,572	16,10,58,693	13,60,22,213	-	-	1,53,168	1,49,70,627	5,51,95,593
Upto 08 Nov	5,51,95,593	2,60,30,529	1,87,52,170	-	-	-	48,43,607	5,76,30,345
From 09 Nov	5,76,30,345	51,42,630	5,57,98,262	-	-	9,86,000	43,56,747	36,03,966
Dec-16	36,03,966	2,62,42,519	84,65,220	-	-	6,60,000	1,47,31,183	73,10,082
Jan-17	73,10,082	4,80,55,800	3,54,03,780	-	-	50,000	1,19,13,436	80,98,666
Feb-17	80,98,666	6,46,56,496	5,46,12,659	-	-	89,235	1,15,79,232	66,52,506
Mar-17	66,52,506	8,65,32,417	6,76,36,835	-	-	1,03,92,727	2,62,62,254	96,78,561
Total	1,14,59,660	1,14,91,25,672	99,23,55,186	-	-	1,49,27,607	17,34,79,192	96,78,561

On perusal of the financials of the appellant, it is observed that the appellant has closing balance of Rs. 5,76,30,345/- as on 08.11.2016 i.e. before the period of demonetization. The cash deposited is out of appellant's own cash in hand and the receipt of cash is nothing but

amount received on account of sales, advances received, amount of commission from the business receipts pertaining to earlier months. The source of entire cash deposited is clearly evident from entries in cash book and duly supported by corresponding vouchers/bills. Further, it is also obvious that during the months of April, May and October the cash received on account of business receipts are almost same. The cash deposit in April 2016 was even higher than that of October or after demonetization.

8.2.1 Further, Demonetization was immediately preceded by season of Diwali during the month of October which is the main season of sales for the automobile industry and many other industries all over the country. It's an auspicious occasion as per the religious and secular ideology followed all over the nation and people are generally inclined towards purchase of new assets for their family. The sales in the year under consideration have been increased from Rs. 6,68,42,73,991/- to Rs. 8,27,28,79,175/-i.e.. number of units sold have increased from March 2016 to March 2017. In view of this, it is quite an observable fact that increased sales have added fresh revenue to the company and hence revenue collection has increased. The surge in sale of cars is normally noted during Diwali and same trend can also be noticed from the books of accounts pertaining to past years of the appellant.

The comparison of record of cash receipts during the period of Diwali in FY 2016-17, FY 2017-18 and FY 2018-19 is under:

	FY 2015-16	FY 2016-17	FY 2017-18
	05.10.2015 to 11.11.2015	23.09.2016 to 30.10.2016	12.09.2017 to 19.10.2017
LOCATION	Cash Receipt	Cash Receipt	Cash Receipt
DABRI	3,94,50,592	3,62,81,694	2,08,22,935
SEC 13	3,13,55,450	2,81,71,478	1,86,63,388
SEC 20	3,41,64,568	2,99,86,129	2,02,51,076
NEXA 09	2,00,05,527	99,23,022	1,41,22,690
KAROLBAGH	1,41,03,266	2,80,65,688	1,99,43,738
PREET VIHAR	3,48,08,871	2,07,04,500	1,48,77,330
NEXA PPG	-	82,41,398	95,45,417
TOTAL	17,38,88,274	16,13,73,909	11,82,26,574

It is the contention of the appellant that increase in amount of sales, pre booking advances etc was received during this period and the proceeds which were in cash during this period were accumulated and same were being gradually deposited in bank accounts of the appellant as the branches were not accepting very high amount of cash in one go particularly after demonetization.

8.2.2 Thus, from the submissions and facts of the case it is evident that all the cash receipts were business receipts of the appellant and nothing adverse has been found during the course of assessment proceedings. The accounts of the appellant are audited and the cash deposit is a regular affair of the assessee. It has been also observed that the cash deposits in few other months it was more than what were made in October 2016 and after demonetization. The AO has rejected the cash book U/s 145(3) of the Act merely on the basis of suspicion that the cash in hand shown by the appellant not appears to be genuine considering the past trend. However, no adverse findings could be brought on record. The appellant has filed all the details regarding cash receipts/sales which are duly accounted in the regular books of account and there is no transaction found which is

unexplained. Thus, in absence of any material facts, invoking Section 145(3) of the Act is erroneous. Since, the appellant has already submitted the details of business receipts in cash during the year.

It cannot be concluded that the assessee has not offered the explanation or any transaction appeared in the books is bogus without having any material facts on record. Further, from the assessment record it has been observed that the appellant has filed all the details which was called by the AO during the course of assessment proceedings. Thus, the AO cannot conclude that the appellant was not able to provide the explanation or the details asked and hence, the genuineness of the cash receipts was not proved. The appellant has submitted that its sale is recorded through online software provided by the Maruti Suzuki India Ltd. and all the other transactions are recorded in the regular books of account

8.3 In view of the above, considering the fact that there is no adverse finding on record, I am of the view that the AO has wrongly made addition of Rs. 2,93,07,500/- u/s 68 of the Act as the appellant has explained the source of the cash deposited in the bank account during the assessment as well as appellate proceedings. In view of the same, the addition made by the assessing officer is hereby deleted and the ground of the appeal is allowed."

12. The Revenue is now aggrieved and has come in appeal before us.

13. Before us, the ld. DR relied upon the orders of the Assessing Officer. The ld. DR argued the cash was deposited during the demonetization period and that the Assessing Officer found that there were hardly any verifiable details of purchasers mentioned on the sale bills and the sale bills did not contain name and description of items sold.

14. Per contra, the ld. counsel for the assessee reiterated what has been stated before the ld. CIT(A) and relied upon various judicial decisions of High Court and the Tribunal as under:

- i) PCIT vs Agson Global Pvt Ltd (2022) 441 ITR 550 (Delhi)
- ii) DCIT vs Bawa Jewellers Pvt Ltd ITA No. 352/DEL/2021
- iii) Fine Gujranwala Jewellers Vs. ITO ITA No. 1540/DEL/2022
- iv) ACIT Vs. Hirapanna Jewellers 96 ITR 24
- v) ACIT Vs. M/s Ramlal Jewellers Pvt Ltd ITA No. 1600/Mum/2023
- vi) ACIT Vs. Chandra Surana 104 ITR 503 104 ITR503
- vii) AddulRazaak Vs, ITO 202 ITD 161
- viii) R.S. Diamonds India [Pvt] Ltd Vs. ACIT 98 ITR 505

15. The ld. counsel for the assessee vehemently denied the allegations of the Assessing Officer that there were no verifiable details of purchasers mentioned on the sale bills. He stated that the assessee is dealer of Maruti Brand which is operating since 1981 in India and stressed that all the amounts received, immaterial of fact whether in cash or via cheque made on account of sales, repair and service, is updated in online software Dealer Management System (DMS), provided by Maruti Suzuki India Ltd. to its dealers. In addition to this, the assessee also maintains another software 'Tally' for recording of transactions and every single details are recorded.

16. The ld. counsel for the assessee further contended that the Assessing Officer has refused to accept the same modus operandi with respect to cash deposited merely on the pretext that the same was deposited during the demonetization period and hence was suspicious in nature. The ld counsel of the assessee argued that in the year under consideration, the revenue collection substantially increased from Rs. 6,68,42,73,991/- to Rs. 8,27,28,79,175/-. He also stated that the period of demonetization was immediately preceded by season of Diwali during the month of October which is the main season of sales for the automobile industry and hence the increased revenue.

17. The ld. counsel for the assessee contended that the Assessing Officer while making the impugned addition u/s 68 of the Act and rejecting the explanation offered by the Assessee with respect to the nature and source of cash deposited in various bank accounts during the demonetization period (i.e.,09.11.2016- 31.12.2016) has acted merely on surmises, conjectures, suspicion, presumptions and assumptions.

18. It is the contention of the ld. counsel for the assessee that the deposits made are part of sales, pre-booking advances etc. received during this period. The proceeds which were in cash during this period were accumulated and same are being gradually deposited in bank accounts of the assessee as the branches did not accept very high amount or cash in one go.

19. We have heard the rival submissions and have carefully perused the relevant material on record and cases relied upon. The CIT(A) has meticulously analyzed the cash deposits during FY 2015-16 and 2016-17 to conclude that all the cash receipts were business receipts and that the invocation of section 145(3) was erroneous. We also find that the Ld DR could not controvert the fact that the assessee maintains its accounts on a specific software which is linked with Maruti Suzuki

software and is simultaneously updated whenever the assessee makes any entry in it. The assessee has filed all details regarding cash receipts/sales which are duly reflected in the audited regular books of account. The AO has not found any evidence to dispel the assessee's contention that all the cash receipts were business receipts of the assessee. The AO has accepted the purchase, sales and the stock figures as per books of account of the assessee. We find that nothing adverse has been brought on record by the AO and during the course of appellate proceedings to discredit the audited books of account of the assessee as defective. We are therefore of the opinion that the Assessing Officer's act of rejecting the cash book u/s 145(3) was erroneous and he made the additions on the basis of surmises and conjectures.

20. The decision of the co-ordinate bench of the Delhi Tribunal in ITA No. 352/DEL/2021 vide order dated 09.06.2023 is apt to the issue in consideration wherein it has been held as under:

"10. It is observed that the AO did not point out any defects in the books of account, no discrepancies were found in the stocks, sales and purchases. The AO's conclusion is that there are huge deposits in the bank account during demonetization period and the assessee could not explain such deposits. The assessee has amply demonstrated with

evidences that the cash sales and the cash deposits during FYs 2015-16 and 2016-17 were almost same and there is only a minimal increase in cash deposits during the FY 2016- 17 relevant to the AY 2017-18. The Ld.CIT(A) has passed a well reasoned order considering all the submissions of the assessee and the averments of the AO."

21. The Ld counsel of the assessee also relied on the Vishakhapatnam Bench of the Tribunal in the case of ACIT vs HirapannaJewellers[supra] and Anantpur Kalpana vs ITO (130 taxmann.com 141) of the Bangalore Bench of ITAT for the proposition that once the sales are admitted by the assessing officer as revenue receipts, the same cannot be added again u/s 68 or tax the same u/s 115BBE. The Bangalore Bench in the case of Anantpur Kalpana Vs. ITO held as under:

"9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and

pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman 146 on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee ITA No.541/Bang/2021 Page 8 of 8 already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted."

22. The ld. counsel for the assessee also placed reliance upon the decision of the co-ordinate bench of the Tribunal at Delhi in the case of Agson Global Pvt Ltd which was affirmed by the Hon'ble High Court of Delhi in 441 ITR 550 (Delhi) wherein it has been held as under:

"17.6. Having regard to the extensive material which has been examined by the Tribunal, in particular, the trend of cash sales and corresponding cash deposited by the assessee with earlier years, we are of the view that there was nothing placed on record—which could have persuaded the Tribunal to conclude that the assessee had, in fact, earned unaccounted income i.e., made cash deposits which were not represented by cash sales. Therefore, in our opinion, the Tribunal correctly found in favour of the assessee and deleted the addition made by CIT(A) of Rs.73.13 crores, under Section 68 of the Act."

23. In the absence of the any adverse material brought on record and in view of our above observations, we do not find any reason to interfere with the well-reasoned findings of the Id. CIT(A). Respectfully following the coordinate Bangalore Bench in the case of Anantpur Kalpana vs ITO(Supra) and the Hon'ble Delhi High Court decision in the case of Agson Global Pvt Ltd (Supra), we are of the considered view that the Id. CIT(A) has rightly deleted the addition made by the Assessing Officer u/s 68 of the Act amounting to Rs. 2,93,07,500/-. Ground raised by the Revenue is dismissed.

24. Other Grounds (ii) to (v) relate to Ground No. 1 and stand dismissed accordingly.

25. Since we have dismissed the appeal of the Revenue, the cross objections of the assessee become infructuous and dismissed as such.

26. In the result, the appeal of the Revenue in ITA No. 2152/DEL/2023as well as Cross Objection of the assessee stand dismissed.

The order is pronounced in the open court on 15.05.2024.

Sd/-

[SAKTIJIT DEY]
VICE PRESIDENT

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Dated: 15th MAY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	