

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1741/Del/2023
[Assessment Year : 2017-18]**

DCIT, Central Circle-17, New Delhi.	vs	Harjinder Talwar, 115, Vardhman Market, Ram Vihar, Delhi-110092. PAN-APGPT8373N
APPELLANT		RESPONDENT
Appellant by		Shri Vivek Kumar Upadhyay, Sr. DR
Respondent by		Shri Shikar Garg, CA
Date of Hearing		20.03.2024
Date of Pronouncement		17.05.2024

ORDER

PER KUL BHARAT, JM

The present appeal filed by the Revenue is directed against the order passed by Ld. CIT(A)-27, New Delhi dated 01.03.2023 for the assessment year 2017-18. The Revenue has raised following grounds of appeal:-

- 1. “The Ld. CIT (A) has erred on the facts and in law, in deleting the addition of Rs.71,49,000/- made on account of cash deposited during demonetization period ignoring the fact that the sales in cash were made by the assessee w.e.f 1.4.2016 to 31.03.2017, however, cash was deposited in bank w.e.f 21.11.2016 i.e. after demonetization.*
- 2. The Ld. CIT(A) has erred on the facts and in law, in ignoring the fact that no prudent businessman will just keep on accumulating cash inspite of the fact that payment for all the purchases to be made by the assessee were to be done through the bank account only.*
- 3. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2. Facts in brief of the case are that the assessee filed return of income, declaring total income of INR 7,90,280/-. The case was selected for scrutiny assessment under Computer Aided Scrutiny Selection ("CASS") to verify the cash deposited during the demonetization period. During the course of assessment proceedings, the Assessing Officer ("AO") issued a show cause notice calling him to explain the source of cash deposited in sum of INR 71,49,000/- into his bank account No.26090200007334 maintained with Bank of Baroda. In response to the show cause notice, there was no representation on behalf of the assessee as per the Assessing Authority. Therefore, the Assessing Authority proceeded to make addition of INR 71,49,000/-, treating the same as the deemed income of the assessee, by invoking the provision of section 69A of the Income Tax Act, 1961 ("the Act").

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, allowed the appeal of the assessee. Thereby, he deleted the addition and reversed the findings of AO, by giving findings on fact that the sales were found to be recorded in the books of accounts for the relevant year and AO accepted the books of accounts.

4. Aggrieved against the order of Ld.CIT(A), the Revenue preferred appeal before this Tribunal.

5. Apropos to the grounds of appeal, Ld. Sr. DR for the Revenue supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the addition. He contended that the AO has given sufficient time to explain the source of cash deposited in his bank account. He further submitted that the

AO after examining the past history had rightly and in a justifiable manner, made the impugned addition. Thus, he prayed for setting aside the finding of Ld.CIT(A) and restoration of the findings as recorded by the AO.

6. On the other hand, Ld. Counsel for the assessee opposed these submissions and reiterated the submissions as made in the written synopsis. He further submitted that the AO erroneously did not consider the submission made in response to the notice. He drew our attention to page 11 of the Paper Book in support of his contention that the assessee had duly responded to the show cause notice. He submitted that under the facts of the present case where the AO accepted the sales and had not rejected the books of accounts. Ld.CIT(A) was justified in deleting the addition. For the sake of clarity, the relevant contents of the synopsis filed by the assessee are reproduced as under:-

1. *“The entire case of the revenue hinges on the suspicion, surmises and conjectures, nothing else.*
2. *The primary reason for scrutiny the proceedings on the basis of the increase in the sale turnover from the preceding year. However, the cash sales and corresponding cash deposits have been a regular feature of the business of the assessee and there is certainly no abnormal trend of cash sales and cash deposit during the relevant previous year. Further, the comparative chart of the sales is provided. (Find case law on this aspect).*
3. *The assessee during the assessment proceeding and remand proceedings has provided the following documents.*
4. *Those documents were not controverted by the Ld. AO. No defect is pointed out by the Ld. AO.*

5. *The Ld. CIT(A) after the perusal of the remand report has passed a reasoned order applying the due application of mind in it.*
6. *The audited BOA was provided and other returns were filed duly in time. DVAT return were not revised and there filed in time.*
7. *In the ground of appeal of the revenue the AO has sit in an arm chair of the assessee.”*

7. In re-joinder, Ld. Sr. DR for the Revenue contended that Ld.CIT(A) erroneously accepted the material which was not before the Assessing Authority.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The AO vide order dated 09.12.2019 had made the impugned addition on the basis that the assessee could not support the source and the sales were increased by two folds of the sales pertaining to the immediately preceding Assessment Year 2016-17. This findings of the AO is reversed by the Ld.CIT(A) by observing as under:-

5.2 Observations and Findings:

- i. *“Sale turnover of the assessee during the year under consideration is 2.54 crores and in immediately preceding year i.e., A.Y. 2016-17 the turnover was 1.25 crores.*
- ii. *Sales made by the assessee are including VAT and VAT returns are also submitted by the assessee within due time.*
- iii. *The accounts of the assessee are liable for audit under Section 44 AB of the Act and from year to year these audited reports have been obtained and submitted to the department along with return of income filed for respective years.*

- iv. Deposit of specified bank notes (SBN) in bank account had taken place on various dates of November and December, 2016. The deposit amount was varying from Rs.5 lakhs to Rs.11 lakhs on each occasion.*
- v. There is no allegation from the ld. AO that stock was not available for sale on date of sales.*
- vi. This is also not the case of the ld. AO that there was any back dating of invoices.*
- vii. During the assessment and remand proceedings, the appellant had provided*
- Copy of ITR, Computation, audited balance sheet and profit and Loss account.*
 - Tax audit report*
 - Cash book*
 - Month wise sale chart*
 - Month wise cash deposit chart*
 - Month wise purchase chart*
 - DVAT returns*
 - Item-wise details showing stock showing quantity and value.*
 - Affidavit on stamp paper of Rs 10/- (total of 49 customers who paid incash amounting to Rs 71,39,322 against sale made by assessee)*
 - Acknowledgment of bills of customer at the time of delivery of goods.*
 - Aadhar cards of all 49 customers.*

viii. *In assessment order as well as remand report, the Id. AO could not identify any defect in sales register, stock register, purchase register and cash book.*

ix. *Once the books of account for F.Y. 2016-17 have been accepted by the Id. AO and the cash sales recorded therein were considered in arriving at the assessed income of the Assessee for the financial year under consideration, then treating the cash deposited in banks against such cash sales as undisclosed income of the Assessee is not sustainable.*

5.3. *Hon'ble Delhi High Court in the case of CIT v. KAILASH JEWELLERY HOUSE in Appeal No. ITA 613/2010 has held that,*

"3. The Commissioner of Income-tax (Appeals) had returned a finding that the stock and cash found at the time of search had been examined by the Assessing Officer and was compared with the stock and cash position as per books. The stock and cash position as per the books had been arrived at after the effect of the aforesaid cash sales. The stock position as well as the cash position as per the said books had been accepted by the Assessing Officer. The Commissioner of Income-tax (Appeals) also noted that the appellant had furnished the complete set of books of accounts and the cash books and no discrepancy had been pointed out. The Assessing Officer had doubted the aforesaid sales as bogus and had made the aforesaid addition. However, the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal returned findings of fact to the contrary.

4. The Tribunal also noted that the departmental representative could not challenge the factual finding recorded by the Commissioner of Income-tax (Appeals). Nor could he advance any substantive argument in support of his appeal. The Tribunal also observed that it is not in dispute that the sum of Rs 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return. It is in these

circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same.

5. The findings of the Commissioner of Income-tax (Appeals) and the Tribunal, which are purely in the nature of the factual findings, do not require any interference and, in any event, no substantial question of law arises for our consideration. The appeal is dismissed."

5.4. In view of the above discussion, judicial decisions and remand report submitted by the Id. AO, the addition of Rs. 71,49,000/- made by the AO u/s 69A r.w.s 115BBE of the Act on account of unexplained cash deposits is not found to be sustainable and therefore same is deleted and these grounds of appeal are hereby allowed."

9. In the present case, the AO has invoked the provision of section 69A r.w.s.115BE of the Act. For the sake of clarity, section 69A of the Act is reproduced as under:-

Unexplained money, etc.

69A. *"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

10. A bare reading of the above provision makes it clear for invoking the provision of section 69A of the Act, the assessee should be found to be owner of any money, bullion, jewellery or other valuable article and such money,

bullion, jewellery or valuable article is not recorded in the books of account. If any maintained by him for any source of income and assessee offers no explanation about the nature and source of acquisition. In the present case, it is not the case that the assessee has not recorded the sales in his books of account but it is the case where the assessee has claimed sales made in cash. The amount found credited in his bank account is stated to be sale price of the goods. The assessee is engaged in the business of trading of jewellery, precious stones etc. The assessee disclosed the sales and duly recorded in his books of accounts. It cannot be inferred that sales were made out of books of accounts but the AO doubted about the genuineness of the transaction. Admittedly, the book result is not disturbed, same has been accepted. The only reason for treating the amount credited in the bank account as deemed income of the assessee as per AO, is that there was astronomical rise in the sales during post demonetization period. Undisputedly, in the absence of any explanation from the assessee, the AO had invoked the provision of section 69A of the Act. However, before Ld.CIT(A), the assessee had filed certain evidences which were admitted and after calling remand report from AO and perusing the material placed before him, he deleted the impugned addition, by holding that it was not a fit case for invoking the provision of section 69A of the Act. Ld.CIT(A) found that sales made in cash were duly recorded in the books of accounts of the assessee. He recorded that the AO could not point out any defect in the books of accounts. The AO failed to bring any evidence contradicting the finding on fact as recorded by Ld.CIT(A). More particularly, the fact that the assessee has recorded the sales in his books of accounts and proved such sales by supporting evidences. And AO himself accepted the books of accounts of the

assessee. Therefore, we are of the considered view that the condition precedent for invoking the provision of section 69A of the Act, is not satisfied. The Ld.CIT(A) has correctly deleted the additions. We do not see any reason for disturbing the findings of Ld.CIT(A), the same is hereby, affirmed. The grounds raised by the Revenue are accordingly, dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 17th May, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI