

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3479/Del/2023 : Asstt. Year : 2015-16

Golam Iyajdani Mondal, 9061/21A, First Floor, Naya Mohalla, Ram Bagh Road, Azad Market, Delhi-110006	Vs.	Income Tax Officer, Ward-63(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AJVPM8679D		

Assessee by : Sh. G. S. Kohli, CA

Revenue by : Sh. Vivek Kr. Upadhyay, Sr. DR

Date of Hearing: 11.03.2024

Date of Pronouncement: 21.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 17.11.2023.

2. Following grounds have been raised by the assessee:

"1. The learned CIT (Appeal) was not justified in confirming an addition of Rs.79,33,575/- and determining the assessed income of Rs.82,82,0651.

2(i) The learned CIT (Appeal) failed to appreciate the submission before him and had passed the appellate order by ignoring the submission made before him.

(ii) The learned CIT (Appeal's) contention that cash cannot be deposited in different parts of India seems to be very surprising and astonishing in view of ATM facility provided by the bankers throughout India.

(iii) That the learned CIT(Appeal) has ignored the tabular chart as an evidence to prove that the cash has been deposited from cash sales and out of withdrawals made from the banks.

(iv) That the cash collection from the different areas of the Country were used to deposit to avoid any mis-happening with cash collection.

3(i) That without prejudice to the above paragraphs where the learned A.O himself has stated that Rs.79,33,570/- is turnover the entire amount cannot be treated as income.

(ii) That where the learned A.O. themselves has stated on page 4 of an assessment order that the appellant had filed the return of income u/s 44AD that each deposit deserves to be over ruled as income should be assessed on the total deposits at the rate the proviso 44AD stipulates.

4(i) That where the appellant had filed the return of income and had disclosed the bank particulars in his return of income and had also filed the bank statement during the course of assessment proceedings with submissions that the entire deposits is an aggregation of cash deposits and withdrawals made from the bank time to time an addition held u/s 69A is not justified.

(ii) However, in case if the appellant's submission is not acceptable an addition could have held U/s 68 or income from other sources.

(iii) That the learned A.O. had held irreparable error by applying the proviso 69A, thus, such order deserves to be quashed.

5. That in view the Asstt. order held for subsequent year i.e. Asstt. yeat 2016-17 and 2017-18, the learned A.O. has rightly followed the proviso 44AD of Income Tax Act, 1961 in determining the income."

3. The assessee filed return of income declaring income of Rs.3,48,490/-. The addition of Rs.79,33,000/- has been made by the Assessing Officer on the grounds that the assessee has declared sale of Rs.50,12,000/- against the aggregated deposits in different banks amounting to Rs.1,29,45,000/-.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A) who affirmed the addition. For the sake of ready reference, the relevant part of the order of the Id. CIT(A) affirming the addition is as under:

"The return of income for A.Y. 2015-16 was filed on 18.03.2017 declaring total income of Rs.3,48,490/-. The case was selected for scrutiny through CASS for examination of large cash deposit in savings bank account. During the assessment proceeding, the AO observed that appellant has deposited cash of Rs.55,79,716/- in account no. 0155000104272728 maintained with Punjab National Bank and Rs. 60,28,006/- in account no. 629501507798 & 629501502769 maintained with ICICI Bank. The AO also observed that the total credit in the bank account including the above-mentioned cash deposits was Rs.1,29,45,905/- whereas the total turnover of the appellant for the F.Y. 2014-15 was Rs.50,12,330/-. The AO asked the appellant to explain why difference in total credit in bank account and turnover which was Rs.79,33,575/- would not be treated as undisclosed income. The appellant submitted before the AO that he had sufficient cash balance in cash book which were deposited in the bank account. The contention of the appellant was not acceptable to the AO. According to the AO, the appellant has filed his return of income for A.Y. 2015-16 computing income u/s 44AD of the I. T. Act. The AO also pointed out that appellant has not filed any return of income since A.Y. 2010-11 till 2014-15 The AO rejected the appellant's justification regarding source of cash deposit due to non verifiability of receipts from sales, receipts from debtors, receipts from loan given to any person, receipt of loan, receipt of advances or receipt from purchase returns as no details was available on record to justify the same. The AO treated the difference in total credit in bank account and turnover of

Rs.79,33,575/- as unexplained u/s 69A and completed the assessment u/s 143(3) at a total income of Rs. 82,82,065/-.

Being aggrieved with the assessment order, the appellant filed the instant appeal. During the appellate proceeding, the appellant submitted that the cash has been deposited out of cash in hand appearing in cash book. The appellant has submitted print out of cash book and photo copy of bank statement of Punjab National Bank and ICICI Bank. The appellant has also submitted print out of sales ledger. According to the appellant, he belongs to Calcutta from where the sufficient customers were used to come who made the purchases and the appellant used to receive the payment by going to that area and deposited the cash directly in bank located in that area. The appellant also objected to the addition of Rs. 79,33,575/- made u/s 69A of the Act.

*I have perused the submissions and documents submitted by the appellant. I also perused the assessment order. There is no denying of the fact that appellant has deposited cash of Rs.1,16,07,722/- in three bank accounts maintained with Punjab National Bank and ICICI Bank. From perusal of the bank statements, it is noticed that the cash has been deposited in the appellant's bank account from different parts of India which includes UP, Bihar, West Bengal, Maharashtra and other states. **In absence of any sale bills and VAT Return, the veracity of the appellant's contention that these deposits are out of sales made by him is doubtful. Further, there were withdrawals made in cash by the appellant from the bank accounts but the appellant cannot take the benefits of withdrawals to explain the availability of cash in hand because deposits were made throughout India by different persons.** In view of this the appellant's contention that the cash deposit was made from available cash in hand is devoid of merit. The AO has rightly pointed out in the assessment order that*

the appellant has not filed any return of income since A.Y. 2010-11 to 2014-15 and even this year's return was filed by computing income u/s 44AD. In absence of any document the previous year's cash balance cannot be verified.

In view of the facts and circumstances narrated above, I do not find any infirmity in the action of the AO in treating Rs.79,33,575/- as unexplained u/s 69A of the Act and computing the total income at Rs. 82,82,065/- for the A.Y. 2015-16. In this view of the matter, the decision of the AO is upheld. Consequently, the Grounds raised by the appellant are dismissed."

5. Aggrieved, the assessee filed appeal before the Tribunal.

6. Heard the arguments of both the parties and perused the material available on record.

7. We have perused the cash deposits in the Punjab National Bank A/c No.27278, ICICI Bank A/c No.....02769, ICICI Bank A/c No.....07798. The total cash deposits in these three accounts were Rs.57,18,166/-, Rs.44,78,000/- and Rs.14,47,480/- total Rs.1,17,40,800/-. The total cash withdrawals from these accounts were Rs.45,80,500/-, Rs.30,52,700/- and Rs.9,85,000/-. The details have been available at paper book page no. 8 to 23 wherein the day wise cash deposits and cash withdrawals as taken from the bank statement have been tabulated. Further, we have gone through the day wise sales register produced at page no. 24 to 27 reflecting total sales of Rs.50,12,000/-. It is also not disputed that the amounts have been deposited in the bank account of the appellant from different parts of India which include U.P., Bihar, West Bengal and Maharashtra. The assessee submitted that the customers who made purchases from the assessee deposits cash in the

area where they belong into the bank account of the assessee. The assessee is dealing with retail goods, the fact of which is also not in dispute. It was submitted that the goods are purchased in cash, sold to various people across India who inturn deposit cash in the bank account of the assessee. The cash deposits and withdrawals are regular over the entire period of the year varying from Rs.7,500/- to Rs.25,000/- - Rs.40,000/-. Similarly, cash withdrawals were also in the similar range. The total turnover shown was Rs.50,12,330/-. On going through the record, we find that the revenue has accepted for A.Y. 2016-17 and A.Y. 2017-18 that the entire cash deposits in the same bank accounts of the assessee to be of business income and determined profit @ 8%. Since, the mode & method of cash deposits and withdrawals reflects the business of the assessee in cash and keeping in view the decisions of the revenue authorities for A.Y. 2016-17 and A.Y. 2017-18, we hold that profit @8% be treated as income on the amount of Rs. 79,33,575/- considered as the unaccounted turnover of the business of the assessee.

8. In the result, the appeal of the assessee is partly allowed.
Order Pronounced in the Open Court on 21/05/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 21/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR