

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

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

Sh. Sudhir Kumar, Judicial Member

ITA No. 216/Del/2024 : Asstt. Year: 2017-18

Neeraj Aggarwal, C/o- C. S. Anand, Adv., 104, Pankaj Tower, 10 LSC, Savita Vihar, New Delhi-110092	Vs	Income Tax Officer, Ward-29(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ACEPA5051B		

**Assessee by : Sh. C. S. Anand, Adv.
Revenue by : Sh. Anshul, Sr. DR**

Date of Hearing: 14.05.2024	Date of Pronouncement: 24.05.2024
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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 30.11.2023.

2. Following grounds have been raised by the assessee:

"1. The National Faceless Appeal Centre (NFAC) ought not to have proceeded to pass the appeal order in an ex-parte manner on 30.11.2023, particularly when the appellant had sought time of 4- 5 weeks as per his letter uploaded vide Ack. No. 506542951071123 and once again sought time of 3-4 weeks as per his letter uploaded vide Ack. No. 531227601281123, wherein he had specifically mentioned that he is in the process of providing the details & documents to his counsel for the preparation of Written Submissions and compilation of Paper Book.

2. On the peculiar facts of the case and in law, the assessment order was liable to be annulled because the learned AO had allowed time of just 2 days to the appellant for making

compliance of final show cause notice dt.19.12.2019 (fixing compliance for 21.12.2019), which in any case was too short.

3. On the peculiar facts of the case and in law, the assessment order was liable to be annulled because the learned AO had failed to allow due opportunity to the appellant to explain/reconcile the differences which were observed by her in the replies directly called for by her from the appellant's two suppliers namely M/s Preeti Trade Link (P) Ltd. and M/s Kajaria Ceremics Ltd. (at the back of the appellant), which instances had adversely influenced her mind.

4. On the peculiar facts of the case and in law, there was no justification to treat the sales of Rs.7391167/- recorded in the books of account for the month of October 2016, as non-genuine.

5. On the peculiar facts of the case and in law, there was no justification to treat the amount of Rs.7000000/-, as the unexplained income of the appellant.

6. On the peculiar facts of the case and in law, the National Faceless Appeal Centre (NFAC) ought not to have applied the 'average cash sale formula' to work out the availability of cash for the month of October 2016 (through which process he/she had restricted the addition of Rs.7000000/- to the extent of Rs.6941617/-), particularly when it was a case where books of account were not only maintained but also audited by a firm of chartered accountants.

7. On the peculiar facts of the case and in law, the addition of Rs.7000000/- is liable to be deleted because this amount was already credited to the P & L A/c.

8. On the peculiar facts of the case and in law, the provisions of section 68 were not applicable with regard to the addition made at Rs.7000000/- (sustained by the NFAC at Rs.6941617/-) and consequently the provisions of section 115BBE too were not applicable with regard to the same.

9. On the peculiar facts of the case and in law, the addition of Rs.440000/- u/s 68 is liable to be deleted because during the course of assessment proceedings itself, the appellant had clearly mentioned that cash of Rs.9600000/- (not Rs.10040000/-) was deposited during the demonetization period (while clarifying that cash of Rs.440000/- was deposited prior to 08.11.2016).

10. On the peculiar facts of the case and in law, the provisions of section 68 were not applicable with regard to the addition made at Rs.440000/- and consequently the provisions of section 115BBE too were not applicable with regard to the same.

11. On the peculiar facts of the case and in law, the disallowance of Rs.4327397/- u/s 40A(3) is liable to be deleted because the provisions of section 40A(3) were not applicable.

12. On the peculiar facts of the case and in law, the disallowance of Rs.4327397/- is liable to be deleted u/s 40A(3) because this amount represented the month wise total payments made in cash during FY 2016-17 towards purchases."

3. The assessee is in the business of trading of sanitary items and tiles. The Assessing Officer observed that the assessee had cash sales in the month of October 2016 of Rs.73,91,600/- and in the month of November 2016 of Rs.5,87,800/-. The total cash purchases from 13 parties in the month of October 2016 was Rs.89,25,800/- to verify the purchases. The Assessing Officer issued summons u/s 131 of the Income Tax Act, 1961 to M/s Kajaria Ceramics Ltd. and M/s Preeti Trade Link Pvt. Ltd. The transactions as per the assessee and as per the parties is as under:

Item	As per assessee	As per M/s Preeti Trade Link Pvt. Ltd.
Total sale	1,04,09,529	1,90,00,000
Closing balance		1,22,750
	As per assessee	As per M/s Kajaria Ceramics Ltd.
Total sale		72,18,100
Closing balance	3,04,033	63,407

4. Further, the details of sales & purchase are as under:

Month	Purchase along with party detail	Sales along with party detail.	Purchase	sales
April, 2016	10249773	12285158	9381238	11813804
May, 2016	10268306	12482384	9482478	12032215
June, 2016	14175483	17118990	13058372	16199773
July, 2016	14966762	16212676	14041243	15651160
August, 2016	10574041	10824214	9983432	10408541
September, 2016	13665953	10259176	12895476	9812144
October, 2016	8925878	13516523	8534558	12313226
November, 2016	14834093	18341635	14551713	17242907
December, 2016	13236584	11515682	13236584	10787771
January, 2016	23924214	22109606	22147340	20570392
February, 2016	19420498	20444478	18217991	19115924
March, 2016	17924562	19406836	17196791	18287751
TOTAL	17,21,66,147	18,45,17,358	16,27,27,216	17,42,35,608

5. From the above, the AO held that there were abnormal increase in the sales in the month of October 2016 compared to other remaining months of the year and added an amount of Rs.70,00,000/- u/s 68 of the Income Tax Act, 1961.

6. Further, the AO made addition of Rs.4,40,000/- on account of the difference between the cash deposited of Rs.1,00,40,000/- and the submission reflecting deposit of Rs.96,00,000/-.

7. Aggrieved, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) confirmed the addition of Rs.69,41,617/- holding as under:

"4.6 After perusal of assessment order and the contention of the appellant furnished during the course of assessment proceedings, it is v seen that, the appellant has 4.6 After perusal of assessment order and the contention of the appellant furnished during the course of assessment proceedings, it is v seen that, the appellant has made cash sales in the month of October 2016 of Rs. 73,91,617/- and from 01.11.2016 to 08.11.2016 the cash sales were Rs. 5,87,880/-. Total cash sales up to 08.11.2016 is Rs. 79,79,497/-. As stated above, the AO had verified the purchase details from 2 parties with whom the appellant had made transactions and it is found that, there were discrepancies in the said purchases. Another opportunity was granted to the appellant to explain the same, however, the appellant has not submitted any documentary evidence/explanation in this regard. During the appellate proceedings, as stated earlier, various opportunities were granted to the appellant and the appellant is seeking adjournment on one ground or another and has not complied during the final hearing as well. As the appellant has not provided any evidence called for, and could not prove that, which month's purchase, the sale amounting to Rs. 73,91,617/- has been reflected in the month of October, 2016. The AO has made addition of Rs. 70,00000/- approximately whereas the difference of cash sales in the month of October 2016 of Rs. 73,91,617/- and average cash sale of Rs. 4,50,000/- is Rs. 69,41,617/- Therefore, out the addition of Rs. 70,00,000/- Rs. 58,383/- is hereby deleted and the balance addition of Rs. 69,41,617/- is hereby confirmed. Accordingly, the grounds of appeal are partly allowed.

4.7 Ground No. 6, 7, 8 & 9

The AO has stated that, the appellant had furnished submission on 02.12.2019, wherein the appellant had shown total cash deposits of Rs. 1,00,40,000/-, whereas the submission uploaded by the

appellant on same day, wherein the appellant has shown cash deposit between 9.11.2016 and 30.11.2016 is Rs. 96,00,000/-. The AO has stated that, this proves that, the difference of the above amount of Rs. 4,40,000/-, which was deposited in the bank remains unexplained and therefore, the AO added Rs. 4,40,000/- to the total income of the appellant.

4.8 As stated above, the appellant had furnished written submission wherein he had shown total cash deposit of Rs. 1,00,40,000/-. Whereas the appellant had uploaded the submissions in the online portal of the Department, where he had shown total cash deposit as Rs.96,00,000/-. As the appellant has not furnished any explanation in this regard, the AO had made addition of Rs. 4,40,000/- a difference in two submissions i.e. Rs.1,00,40,000 and Rs. 96,00,000/-. During the appellate proceedings also, the appellant has not produced any evidence in this regard. Therefore, I am of the opinion that, the AO has rightly treated Rs. 4,40,000/- as unexplained cash deposit and added back to the total income of the appellant. In view of this, the addition of Rs. 4,40,000/- is hereby confirmed. Accordingly, this ground of appeal is dismissed."

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

9. Before us, it was argued that with regard to M/s Preeti Trade Link Pvt. Ltd., the assessee has purchased total amount of Rs.1,53,63,505/-, the ledger account has also shown the total transactions of Rs.1,90,00,000/- as mentioned in the reply given by M/s Preeti Trade Link Pvt. Ltd. to the Assessing Officer. We have gone through the ledger placed before us. The total transactions debited was of Rs.1,90,00,000/- and the total of transactions credited was of Rs.1,88,79,950/- with a closing balance of Rs.1,20,050/-. Thus, the reply given by M/s Preeti

Trade Link Pvt. Ltd. to the Assessing Officer of Rs.1,90,00,000/- was correct. Whereas the total purchases shown by the assessee was Rs.1,53,63,505/-. This amount was exclusive of VAT of Rs.20,16,460/- and the advance payment of Rs.15,00,000/-. Thus, the amount of credit of Rs.1,88,79,950/- of the assessee tallied with the reply given by M/s Preeti Trade Link Pvt. Ltd. to the Assessing Officer of Rs.1,90,00,000/-. Hence, no addition is called for on this account.

10. Similarly, with regard to M/s Kajaria Ceramics Ltd., the Assessing Officer found out difference in the outstanding amount of Rs.3,04,033/- as per the assessee to Rs.63,407/- as given by M/s Kajaria Ceramics Ltd. We find that the transactions with M/s Kajaria Ceramics Ltd. was to the tune of Rs.5,50,75,374/- and closing balance Rs.4,31,831/-. Further, the assessee also had transaction with M/s Kajaria Ceramic Ltd. GVT wherein the total transactions was of Rs.72,17,850/- and the closing balance is Rs.63,407/-. Similarly, the assessee had transactions of Rs.2,70,02,091/- with a closing debit balance of Rs.3,04,330/- with respect to M/s Kajaria Ceramics Ltd. VITRIFIED. Thus, we find that the revenue authorities erred in not examining the three ledgers of M/s Kajaria Ceramic Ltd., M/s Kajaria Ceramic Ltd. GVT, M/s Kajaria Ceramic Ltd. VITRIFIED. The Assessing Officer mistook closing balance of M/s Kajaria Ceramic Ltd. GVT with the closing balance of M/s Kajaria Ceramic Ltd. VITRIFIED. Since, the closing balances have been reconciled. We hold that no addition is called for on this account.

11. With regard to the jump in the sales in October, we have gone through the details of sales & purchases mentioned by the Assessing Officer which are as under:

Month	Purchase along with party detail	Sales along with party detail.	Purchase	sales
April, 2016	10249773	12285158	9381238	11813804
May, 2016	10268306	12482384	9482478	12032215
June, 2016	14175483	17118990	13058372	16199773
July, 2016	14966762	16212676	14041243	15651160
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March, 2016	17924562	19406836	17196791	18287751
TOTAL	17,21,66,147	18,45,17,358	16,27,27,216	17,42,35,608

12. On going through the above table, which is apparent that there was no abnormal jump in any of the month in the sales, rather the highest sales in the month of January and the lowest sales were in the month of August. Hence, the addition made of Rs.70,00,000/- on account of jump in the sales is found to be factually incorrect. The sales have been accepted by the revenue. The audited results have not been disputed. The profit derived out of the sale was not in dispute. The volume of sales during all months is accepted. Hence, we hold that no addition is called for on account of sales made in one month.

13. With regard to the difference of Rs.4,40,000/- mentioned by the Assessing Officer, we find that the amount of Rs.2,65,000/- was deposited on 05.11.2016, Rs.50,000/- was deposited on 05.11.2016 and 1,25,000/- has been deposited on 07.11.2016. Hence, the difference of the amounts stands tallied. Hence, no addition on this account is called for.

14. The appeal of the assessee is allowed on this ground.

Disallowance u/s 40A(3):

15. The Assessing Officer held that vide point no. 25 of the submission dated 02.12.2019, the assessee has shown cash purchase amounting of Rs. 43,27,397/- in the F.Y. 2016-17. The AO held that the assessee was queried but no submission /documents have been uploaded on ITBA Portal till the date of passing the order.

16. Referring to the provisions of Section 40A(3) of the I.T. Act, 1961,

"As per section 40A(3), where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs. 20,000 (w.e.f. A.Y. 2018-19 Rs. 10,000/-), no deduction shall be allowed in respect of such expenditure."

as the assessee has provided no documentary evidence to substantiate the cash purchases made in the year under consideration, the AO disallowed an amount of Rs. Rs. 43,27,397/- u/s 40A(3) of the Income Tax Act, 1961.

17. Aggrieved, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) confirmed the addition holding as under:

"4.9 The AO has stated that, the appellant had shown cash purchases amounting to Rs. 43,27,397/- in the F.Y. 2016-17. A show cause notice was issued to the appellant to explain the same. The AO has relied upon the section 40A(3) of the Act, where the appellant incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than account payee cheque or account payee bank or use of electronic clearing system through a bank account, exceeds Rs. 20,000/- (w.e.f. A.Y. 2018-19 Rs. 10,000/-) no deduction shall be allowed in respect of such expenditure. The AO has stated that, the appellant has not furnished any documentary evidence to substantiate the cash purchases made in the year and therefore, the AO disallowed Rs. 43,27,397/- u/s 40A(3) of the Act and added back to the income of the appellant.

4.10 During the assessment proceedings, the AO required the appellant to explain with regard to cash purchases shown of Rs. 43,27,397/-. As AO has stated that, no explanation was furnished by the appellant, the AO added as per provisions of the section 40A(3), Rs. 43,27,397/- to the total income of the appellant. During the appellate proceedings, the appellant has not furnished reply or documentary evidence to establish his claim. The provisions of section 40A(3) is not applicable to that case under consideration. Therefore, I do not find any reason to interfere with the findings of the AO and hence, the disallowance of Rs. 43,27,397/- is hereby confirmed. Accordingly, the ground of appeal is dismissed."

18. We find that the Assessing Officer has not mentioned any single date/day on which the cash purchases have been made in

excess of Rs.20,000/-. The total cash purchases were to the tune of Rs.43,00,000/- which are petty purchases made from neighboring shops to meet the immediate requirements of the customers with regard to small sanitary items which were not available in their store. The total cash purchases were to the tune of 2.6% over the turnover of Rs.17.42 Cr. The audit report has also not mentioned any purchases made in contravention of provisions of Section 40A(3) of the Income Tax Act, 1961. The query of the AO dated 19.12.2019 and the reply of the assessee dated 21.12.2019 have been examined. As the AO has not brought any specific instance of purchases of more than Rs.20,000/- on any single day, we hold that no addition on this account is called for.

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

Order Pronounced in the Open Court on 24/05/2024.

Sd/-

**(Sudhir Kumar)
Judicial Member**

Sd/-

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

Dated: 24/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR