

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

**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.3752/Del/2023 A.Y. 2017-18

DCIT Central Circle -7 Delhi	Vs.	Harish Gupta 1171/14, 11 Floor, Kucha Mahajani Chandni Chowk, Delhi11006 PAN AFZP0134P
Appellant		Respondent

Appellant by	Sh. Vivek Kumar Upadhyay, Sr. DR
Respondent by	Sh. Manoj Gupta, CA Sh. Pranshu Gupta, CA
Date of Hearing	15/04/2024
Date of Pronouncement	30/04/2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed at the behest of the assessee is directed against the order dated 17.10.2023 passed by the CIT(A)-24, New Delhi arising out of the order dated 26.12.2019 passed by the ACIT, Circle – 47 (1), Delhi under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2017-18 whereby and whereunder the addition made to the

tune of Rs.90,27,979/- on account of unaccounted income brought in the books through bogus cash sales u/s. 68 r.w.s. 115BBE of the Act has been deleted.

3. The brief facts leading to the case is this that of the assessee, the proprietor of M/s. Hari Om Traders, electronically filed the return of income for A.Y. 2017-18 declaring taxable income of Rs.33,58,710/-. Upon selection of the matter under CASS, notice under Section 143 (2) of the Act was issued on 27.08.2018. and served upon him. In fact, it was found during the course of the assessment proceedings, that the assessee between 09.11.2016 to 31.12.2016 had deposited Rs.98 lacs in one Axix bank current account whereupon by and under a notice dated 28.09.2019 issued under Section 142(1) of the Act, the assessee was asked to explain the source of such cash deposit.

4. Further the assessee was directed to furnish following documents :-

Date wise details of cash deposits during FY 2016-17

Copy of ledger account of cash for FY 2015-16 and FY 2016-17 with running balance

Copies of all bank statements for FY 2016-17, highlighting the cash deposits

Details indicating name, PAN, contact details and address of parties from whom the said cash was received

Copies of all invoices of cash sales

Copy of sales ledger for the year under consideration
month-wise details of purchases, sales, cash sales and
cash deposits for the year under consideration

Name, address, PAN of beneficiary to whom RTGS NEFT
has been made immediately after the cash deposit and
justify the purpose of such a transfer immediately after
cash deposit.

5. In response thereto, assessee by and the reply dated
09.09.2019 submitted following details :-

Date wise details of cash deposits during FY 2016-17

Copy of ledger account of cash for FY 2015-16 and FY 2016-17
with running balance

Copies of all bank statements for FY 2016-17, highlighting the
cash deposits

parties from whom the cash was received-explanation

month-wise details of purchases, sales, cash sales and cash
deposits for the year under consideration

list of beneficiary (one) to whom RTGS/NEFT has been
made immediately after the cash deposit and justification
of the purpose of such a transfer immediately after cash
deposit.

6. Further notice dated 31.01.2019 u/s. 142 (1) of the Act was
issued directing the assessee to furnish the further following
documents :-

Month-wise details of Sales and Purchases as per format
AY 17-18 & AY 16-17

Month-wise Cash Sales and Cash Deposits from 01-04-
2015 to 31-03-2016

Month-wise Cash Sales and Cash Deposits from 01-04-
2016 to 31-03-2017

Details of top ten parties to whom the Sales are made
(including Cash Sales)

Details of top ten parties from whom the Purchases are
made

To furnish month-wise details of Stock giving opening
stock of each month purchases and sales in each month.

To furnish copy of Stock Register or Stock

7. On 05.11.2019 monthwise details of sale and purchase for the period of A.Y.2016-17 and 2017-18 was furnished by the assessee alongwith explanation to this effect that there was increase in cash sale F.Y. 2016-17 of F.Y. 2015-16 due to festivals and marriage seasons. Monthwise cash sales and cash deposit for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017 as per format was duly furnished. The details of 10 parties to whom sales and purchase were made along with the details of stock of each month, Purchase and Sales of each month as per format were furnished. Monthwise purchase, sales of F.Y. 2016-17 showing opening stock, purchase, total sales, cash sale, credit sale, closing stock, were submitted by the assessee before the Ld. AO. Retails

sales of jewellery and cash sales worth of Rs.90,27, 979/- was made only in the month of October-November, 2016 and an amount attributed to cash sale of Rs.98 lacs was deposited in the bank during demonetization period as also contended out by the assessee with corroboration evidences. So far as the cash sale is concerned it was submitted by the assessee that cash transaction was also done earlier year, declared in the Return of Income and in audited financial statement with Tax Audit Report From 3CB-3CD which was already on record with the department. This was placed by the assessee while replying the show cause dated 27.11.2019. when he personally appeared before the Ld. AO.

8. Thereafter the assessee was further directed to furnish the documentary evidences of new unsecured loans, Cash Ledger and Sales Register for next F.Y.2017-18. whereupon documentary evidences of unsecured loans of Harish Gupta (HUF) and Smt. Poonam Gupta, monthly Cash Summary and Cash Book for next F.Y. 2017-18, Sales Register and Stock Register for next F.Y. 2017-18. were furnished. Apart from that the bank statement of Smt. Poonam Gupta was duly submitted.

9. The Learned AO finally made an addition of Rs.90,27,979/- as 100% cash sales during October,2016 to November,2016 (pre-demonetization) on account of cash deposited during the demonetization period holding the same unexplained cash credit under Section 68 of the Act.

Being aggrieved by and /or dissatisfied with the said order passed by the Ld AO an appeal was preferred by the assessee before the First Appellate Authority which was allowed upon deletion of addition.

10. After taking into consideration the entire aspect of the matter of the CIT(A) with the following observations deleted the impugned addition.

11. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on records.

12. The crux of the submission made by the assessee is this that as there was a fall in the business during the first six months i.e. April to September 2016 when the turnover declined sharply from 49.19 crores to 9.20 crores the assessee modified his business pattern by additional activity of retail sale, re-sale of jewellery and trading in commodity derivatives upon discontinuation of commission business. As a result of the same, there was substantial increase in volume of business during the second half year of the Financial Year 2016-17 particularly during the festival

and marriage season which is an established fact from the details tabulated here in below:-

S.No.	Particulars	FY 2016-17	FY 2015-16 (Rs.)
1.	Total Sales for Oct to March (6 month)	77.53 crores	26.11 crore
2	Total sales for October month	7.32 crore	6.22 crore
3.	Total sales for Nov month	30.29 crore	8.17 crore

Assessee's total business, income and taxes paid increased this year as compared to the preceding year :

S.No.	Particulars	FY 2016-17 (Rs.)	FY 2015-16 (Rs.)
1.	Total turnover	86.77 crore	75.40 crore
2.	Gross profit	22.76 lakh	4.54 lakh
3.	Gross profit rate	0.26%	0.06%
4	Net profit	20.37 lakh	11.21 lakh
5	Net profit rate	0.23%	0.15%
6	Income from Business	20.32 lakh	11.12 lakh
7	Income from Business	7.24 lakh	1.19 lakh

13. In fact the cash deposit out of the cash sales made in October 2016 and November 2016 to the tune of Rs. 90,27,989/-is the issue in dispute before us. We note that this particular deposit made during the demonetisation period some cash deposit made by the assessee even after demonetisation period during February 2017 and March, 2017(7.65 lacs, 2.50 lacs respectively) being part of his turnover for the year under consideration. Upon perusal of the entire set of documents which was duly submitted before the LD. CIT(A) and also before us it appears particularly from the bank statement that cash deposit amounting to Rs. 25 lacs, 50 lacs and 23 lacs on 11.11.2016, 12.11.2016 and 15.11.2016 respectively was made in Axis Bank account being No 911020032216878. Apart from that the assessee duly submitted the cash invoices evidencing cash sales being accounted for in the books of accounts. Further that from the details of purchase, sales, cash sales cash deposits and month wise details as annexed to the paper book filed before us establishes the fact that during the months of October and November, the assessee made a total sale of Rs.37,60,90,851/- (Rs.7,31,71,101/- and Rs.30,29,19,750 for the month of October and November respectively) out of which the cash sales made was

Rs. 90,27,979/- (Rs.44,05,841/- and 4,65,22,138 for the month of October and November respectively out of which 98 lacs was deposited in the month of November. The details of purchase, stock and sales, sales verified from the documents placed before us which was already been verified by Ld. CIT(A) establishes the fact of genuineness of the cash sale made by the assessee. Relevant to mention that the cash deposited by 15.11.2016 was by old currency as new currency was not available in the market in these quantities till 15.11.2016. The cash deposit made by the assessee cannot be questioned particularly taken into consideration the fact already narrated here in above. It is a fact that substantial large sale was made though in the month of October and November can lead to suspicion but cannot be the sole cause of making addition. If that be so, then the same would be a product of only surmise and conjecture. Further that the Ld. AO has not taken the trouble to verify the availability of stock rather not disputed the issue of availability of stock of subsequent sales during October, November, 2016. Neither the bills were verified for its correctness nor specific defects have been pointed by the Ld. AO. Not only that, but also the Ld. AO did not make any adverse comment on the details

submitted by the assessee. We find that unavailability of stock and genuineness of purchases has not been disputed by the Ld. AO and thus it is an established and undisputed fact that adequate stock was available for making sales before demonetization. We also keep note that the purchase was also made through banking channel prior to 1.10.2016 evidencing paid stock as on 1.10.2016. Thus, having regard to the facts and circumstances of the case, we do not find any reason to interfere with order of the deletion of the addition to the impugned amount of Rs.90,27,979 by the ld. CIT(A) without any ambiguity. The same is, thus found to be just and proper. The appeal filed by the revenue, is, thus found to be not devoid of any merit and thus, dismissed.

Order pronounced in the open court on 30th April, 2024.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Date:- 30 .04.2024

*NEHA, Sr. PS

Sd/-

**(MADHUMITA ROY)
JUDICIAL MEMBER**