

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1330/DEL/2024
(Assessment Year: 2017-18)**

Late Shri Jageet Singh,
Represented by Legal Heir,
Mrs. Paramjeet Mand,
B-2B, 280, Janakpuri,
New Delhi – 110 044.

vs.

CIT (Appeals),
New Delhi.

(PAN : ALNPS6343N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vatsal Sharma, AR
Shri Aditya Sharma, CA
Shri Suvir Sharma, CA

REVENUE BY : Shri Sandip Kumar Mishra, Sr. DR

Date of Hearing : 28.05.2024

Date of Order : 30.05.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 25.01.2024 for the assessment year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. Without prejudice the Ld. AO has wrongly conducted the scrutiny proceedings in the name of the deceased Assessee without bringing on record all of his legal heirs as per the requirement of law.

1. The Ld. AO has ignored the judicial precedents provided by the Assessee during the course of the proceedings wherein it was highlighted that the addition to Assessee's income is bad in law and has been rejected by various courts
2. That the Assessing Officer erred in rejecting books of account u/s 145(3) of the Act in the case of the appellant which were duly audited, without any basis and justification and making the assessment u/s 144 of the Act.
3. The Appellant challenges the Ld. AO's decision to reject their books of account under section 145(3) of the Act. The Ld. AO misunderstood the Appellant's business operations. Firstly, the Ld. AO misread the 'other operating revenue' of INR 4,94,46,336 as additional income. This amount represents collections from retailers transferred to the company's consolidator. The Appellant retains only a minor margin on these sales. Secondly, the Ld. AO criticized the Appellant's 8% tax payment, questioning the turnover of INR 4,97,37,553. However, the turnover includes purchases of INR 4,90,70,020 for recharge coupons sold to retailers. The actual profit is INR 6,67,533, translating to a 1.34% margin. Lastly, the Ld. AO referenced cash deposits of Rs.1,84,16,000 during demonetization to question turnover. The Appellant had disclosed this under "other operating revenue" and paid tax on it. Adding this to turnover for tax under section 115BBE is incorrect.
4. That the Assessing Officer erred in making addition on account of cash deposits u/s 68 of the Act without giving proper opportunity to the Appellant to explain the facts of the case and also without appreciating that the Appellant has been regularly making cash deposits in the bank account and deposits under reference cannot be alleged to be undisclosed income only for the reason that during the particular period amounts deposited were excessive as compared to amounts deposited in other periods without correctly examining into the record of the appellant and considering the circumstances under which cash was deposited in the bank account.
5. That the Assessing Officer erred in making addition by referring to provisions of Section 69A of the Act without appreciating that provisions of above Section are not applicable in a case where the Appellant has deposited the cash in the bank account since provisions of above Section are applicable when an assessee is found to be owner of an asset during the course of search or survey and provisions cannot be invoked in a case where assessee has already declared the cash by way of depositing in the bank account and making necessary entries in the books of account regularly maintained by it.
6. That the Assessing Officer erred in making addition in respect of cash deposits without fully appreciating and following the instructions of CBDT issued in this regard and also without referring the matter to higher authorities for necessary approval as was required and also without fully

examining the record in regard to cash deposits made by the Appellant as has been directed to be examined by CBDT.

7. That the Assessing Officer erred in making addition on account of cash deposited in the bank which was represented by cash balance as per books and/or recovery from sundry debtors without appreciating that amount under reference has already been considered as income by the Appellant in the year under reference or in earlier years and, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position.

8. That the Assessing Officer erred in determining tax liability as per Section 115BBE of the Act in the case of the appellant in respect of income which has already been included in the Return of Income without appreciating that the income which has already been declared in return cannot be deemed to be undisclosed income as per Section 68/69A of the Act and therefore Section 115BBE is not applicable in this case.

9. The CIT(A) ignored the fact that during the course of Assessment Assessee met with a vehicular accident and passed away. The Assessee did not get a reasonable opportunity of being heard. The period between the Show Cause Notice and Assessment Order was only 5 days.”

3. Brief facts of the case are that late Shri Jagjeet Singh was a wholesale dealer of consolidator company in which he was appointed as the West Delhi Head. He used to collect cash from all the smaller retailers/vendors and deposit the same with the consolidator company. The Assessee also has filed audit report u/s 44AB of the Income-tax Act, 1961 (for short ‘the Act’) declaring sales of INR 4,97,37,553 and net profit of INR 2,89,673. The business was automatically wound up upon the demise of the sole proprietor.

3.1 The Assessee filed belated return of income (ITR-3) for AY 2017-18 on 30.10.2017 vide e-filing acknowledgement No.274672221301017. The Assessee declared an income of INR 3,20,670 on which tax of INR 2,129 was deposited by the Assessee as Income Tax. The case was selected for

scrutiny under CASS. Notice u/s 143(2) of the Act dated 27.08.2018 was duly served as the same was sent through ITBA portal to the linked email id. The AO issued the Show Cause Notice ('SCN') on 15.12.2019. A day after that i.e. on 16.12.2019, the Assessee met with a vehicular accident and was admitted to the hospital on the same day. Due to the serious medical condition of the Assessee, filing the response to the SCN was not possible. The AO passed the order under the provisions of section 144 (Best Judgement Assessment) on 20.12.2019. As the situation of the Assessee got worse he passed away on 28.12.2019.

3.2 The AO vide order dated 20.12.2019 included addition made on account of cash deposit of INR 1,84,16,000 alleging the same to be undisclosed income u/s 68 of the Act and has computed the liability as per the provisions of section 115BB.

4. Upon assessee's appeal, ld. CIT (A) confirmed the assessment order.

5. Against this order, assessee has filed appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel for the assessee submitted that assessee has passed away during the course of assessment, hence the assessee's case was not properly canvassed before the authorities below. He prayed that an opportunity may be granted to the assessee in this regard to properly canvass the case. Furthermore, ld. Counsel of the assessee sought to submit additions evidences as under :-

- (i) Assessee's ledger in the books of Vishesh Infosystems (the party to whom the cash deposited was transferred in exchange of the talktime coupons) (Annexure 1);
- (ii) Assessee's cash ledger clearly showing each entry of cash collected and deposited in the Bank throughout the year (Annexure 2); and
- (iii) Assessee's Bank statement for the year 2016-17 reflecting the activities in the Bank Account throughout the year. It clearly depicts that depositing cash in bank was a regular business activity for the Assessee and was carried out all throughout the year. (Annexure 3)

7. Per contra, ld. DR for the Revenue did not have any serious objection in remitting the matter.

8. Upon careful consideration and in the interest of justice, we remit the issue along with additional evidences submitted to the file of AO. AO shall decide the issue afresh after giving the assessee an opportunity of being heard.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 30th day of May, 2024.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 30th day of May, 2024

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**