

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.201/Ahd/2023
Assessment Year : 2017-18

The ACIT Circle-1(1)(1) Vadodara	Vs	Radhika Jewellers 14/16, Indrapuri Complex New Sama Road, Sama Vadodara - 380 006 (Gujarat)
PAN: AAHFR 2958 M		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh b. Parma, AR
Revenue by :		Shri Nitin Vishnu Kulkarni, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/06/2024
घोषणा की तारीख /Date of Pronouncement: 13/06/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal by the Revenue arises against the order of the Ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "the Ld.CIT(A)"] dated 07-02-2023, for the Assessment Year (AY) 2017-18, wherein the Ld.CIT(A) partly allowed the appeal deleting additions made by the Assessing Officer [hereinafter referred to as "the AO"] in his order passed under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"].

Facts of the Case:

2. The assessee-firm is a goldsmith engaged in the business of dealing in gold, silver ornaments/jewellery, and trading in fine gold bars. The assessee filed its original return of income on 26-10-2017 declaring total income of Rs.22,15,250/-. The case was selected for complete scrutiny. The case was selected mainly for the reason that during the period of demonetization, the assessee deposited Rs.6,28,34,000/- in old currency in two bank accounts. A show-cause notice was issued by the AO to the assessee as the source of cash deposit was not verifiable. The Assessee filed its reply in response to the notice. The AO was not satisfied with the reply of the assessee and treated the cash deposited amounting to Rs.83,50,000/- (SBN/OHD - old currency) as unexplained cash credits and added the same as income under section 68 of the Act. The assessee had already recorded these sales and offered the corresponding income for taxation. The AO also disallowed the expenditure on account of job-work of Rs.34,49,794/- u/s. 37(1) of the Act.

3. The assessee filed an appeal against the order of the AO and the Ld.CIT(A) deleted the additions made by the AO, considering the facts and evidence provided by the assessee. The Ld.CIT(A) found no independent inquiry or discrepancy in the evidence submitted by the assessee, which included the cash book, bank book, purchases, stock register, and audited books of accounts. The Ld.CIT(A) also allowed the expenditure on account of job-work charges of Rs.34,49,794/-.

4. Now, therefore, the Revenue is in appeal before us, against the order of Ld.CIT(A) with following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of cash sales of Rs. 75,00,000/- made by the AO without appreciating the fact that huge cash sales were made just after demonetization and quantum of cash sales was abruptly on higher side on a single day?*
- 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.8,50,000/- made by the AO on account of unexplained credits?*
- 3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.34,49,794/- made by the AO on account of disallowance u/s 37(1) of job work expenses?*
- 4. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.*

It is prayed that the order of the CIT(A) on the above issues be set-side and that of the Assessing Officer be restored.”

On the grounds of appeal:

5. The Ld.Departmental Representative (DR) heavily relied on the order of the AO and invited our attention towards comparative figures of turnover, cash deposits in bank, cash sales relating to Financial Years (FYs) 2015-16 and 2016-17. He also pointed out that the assessee in spite of having cash on hand on 07-11-2006 amounting to Rs.5,60,75,354/- deposited only Rs.69,000/- on 08-11-2016. The Ld.DR also pointed out that the stock register does not contain the details of transactions for sending goods for job-work and receiving the same back after job-work.

6. On the other hand, the Ld.Counsel for the assessee stated that the assessee provided an elaborate explanation supported by documentary evidence, stating that the cash was generated from cash sales made up to 08-11-2016 and that there was a sufficient cash balance on that date.

6.1. He further submitted that the business has been operational for over 25 years with regular VAT returns. Cash deposits were from sales duly accounted for in the books of accounts. Such sales were made out of accumulated stock. The opening stock for the year was Rs.12.95 crore and the same was consistently maintained. There was no other source of income to the assessee. The documentary evidence which was filed before lower authorities included cash books, bank books, party-wise purchases and sales, sample invoices, month-wise stock details, and stock registers and the AO has not found any mistake in such books. The AO has not rejected the books of accounts. The AO has not treated any sale as invalid.

6.2. The Ld.Counsel for the assessee further contended that the AO has added Rs.75,00,000/- on ad-hoc basis u/s. 68 of the Act and the AO cannot make such ad-hoc addition on the basis of estimation. Unless the cash in hand is rejected, no such addition u/s. 68 of the Act cannot be made even if the cash balance is in the form of old currency.

6.3. Regarding the non-availability of the details relating to gold sent for job-work and returned from them in the stock register, the Ld.Counsel for the assessee stated that the details were submitted before the Ld.CIT(A) for

consideration and upon obtaining the remand report, the Ld.CIT(A) passed his order.

6.4. The Ld.Counsel for the assessee placed reliance on the following judicial pronouncements, which we have evaluated and considered:

1. **ACIT v. Hirapanna Jewellers, (2021) 189 ITD 608 (Visakhapatnam).** The Tribunal in Hirapanna Jewellers held that when sales are duly recorded and offered for tax, the same amount cannot be added again as unexplained income under section 68 of the Act.
2. **Balwinder Kumar vs. ITO, (2023) 151 taxmann.com 338 (Amritsar).** The Tribunal emphasized that additions cannot be made based on mere assumptions and presumptions without substantive evidence.
3. **R. S. Diamonds India P. Ltd. vs. ACIT, (2022) 198 ITD 545 (Mumbai).** The Tribunal ruled that when sales are recorded in the books and supported by evidence, the AO cannot disregard them without valid reasons. This decision underscores the importance of documented evidence in proving the genuineness of transactions.
4. **Amikrupa Education Trust v. ITO, (2024) 159 taxmann.com 1658 (Ahmedabad).** The Tribunal highlighted that assumptions cannot replace evidence. Additions based purely on presumptions without substantive proof violate principles of natural justice.
5. **CIT vs. Vishal Exports Overseas Ltd., Tax Appeal 2471 of 2009 (Gujarat).** The Hon'ble Gujarat High Court held that taxing the same income twice is impermissible.
6. **CIT vs. Kailash Jewellery House, ITA 613/2010 (Delhi High Court).** The Hon'ble Delhi High Court ruled that once income is recorded and offered for tax, it cannot be added again as unexplained income.

7. ITO vs. Rajeshkumar Chhanalal Patel, ITA 2159/Ahd/2016 (Ahmedabad). The Tribunal emphasized that additions must be based on evidence, not on assumptions or presumptions.

7. We have heard the rival contentions. Upon careful consideration of the submissions and evidence, we find that the assessee has maintained consistent stock levels and recorded all transactions in the books of accounts. No discrepancies were found in the cash book, bank book, purchases, monthly stock, or audited books of accounts by the AO.

7.1. We have also noted the facts that the cash deposit in question is part of the sale which is explained by the assessee. The AO has not doubted corresponding purchases and quantitative details. The profit element of such sale is already offered for taxation by the assessee. Income so declared by the assessee is also accepted by the AO. Therefore, the AO's additions were based on presumptions and assumptions without any cogent material evidence.

7.2. The judicial pronouncements relied upon by the Ld.Counsel for the assessee highlight that once the underlying amount forms part of the sales duly accounted for in the books and the income element embedded therein has been accepted by the AO, the same amount cannot be added again under section 68 of the Act as it would amount to double taxation.

7.3. Based on the above findings and judicial precedents, we hold that the Ld.CIT(A) was justified in deleting the impugned additions. The AO's

action was based on assumptions without any substantive evidence. Consequently, the grounds raised in the appeal of the Revenue are rejected.

8. In the result, Revenue's appeal stands dismissed.

Order pronounced in the Open Court on 13th June, 2024 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V.MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 13/06/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)/(NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad