

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सटस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 1361/Kol/2023**  
**Assessment Year: 2017-18**

Ragini Verma  (PAN: AEJPV 6666 A)	Vs.	ACIT, Circle-49(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	02.05.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	13.06.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri Abhijit Adhikary, Addl. CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 06.12.2023 for the AY 2017-18.

2. The only issue raised in ground no. 1 is against the confirmation of addition by the Ld. CIT(A) of Rs. 24,98,500/- as made by the AO on account of cash deposited in specific bank notes during 8.11.2016 to 30.12.2016 u/s 69A of the Act.

3. Facts in brief are that the assessee filed return of income on 04.08.2017 declaring total income of Rs. 29,66,860/-. The case of the assessee was selected for scrutiny under CASS for the reason of cash deposit during demonetization period . Notices u/s 143(2) & 142(1) of the Act were duly issued and served on the assessee. The assessee submitted before the AO various documents and details as directed in the questionnaire accompanying the notice u/s 142(1) of the Act. The AO also issued notice u/s 133(6) to the banks of the assessee to furnish the bank statements, details of cash deposited in the specified notes, copies of pay-in-slips for cash deposits and details of payment made to various parties and KYC details etc. which were duly provided by the bank. The assessee, vide submission dated 11.10.2019 uploaded online, submitted that the details before the AO, which according to AO, were not in accordance with the notice u/s 142(1) of the Act dated 25.09.2019. Again show cause notice dated 26.11.2019 was issued fixing the hearing on 30.11.2019. The AO, after examining the information received from the bank, observed that the assessee has deposited cash during demonetization period and has failed to furnish any evidence of doing business. The AO ,accordingly, again issued a show cause notice to explain the cash deposited failing which why the same should not be treated as unexplained money u/s 69A of the Act. Thereafter the AO, after giving details of cash deposits on page 2 to 6, observed from the reply received from the assessee dated 30.11.2019 that the assessee has submitted that she was doing business of retail sale by purchasing the sarees from different Haat Bazars and selling them on retail basis to customers from 3A, Naya Pally Road, Kolkata-700055. The assessee has submitted that the client is dealing in sarees which were exempt from VAT, Excise duty etc. The assessee has not furnished the copy of cash book along with other documents. The AO observed that the cash purchases were Rs. 20,44,042/- whereas the total sales were Rs. 46,45,965/- and thus there was a GP of 62.46% which is unbelievably very high. The AO observed that the assessee has cooked up a story of having a business, which could not be verified, to cover the deposits during the demonetization period. Thereafter the AO, after discussing the income tax return during demonetization period preceding and succeeding years, came to the conclusion that this is nothing but

an unexplained money u/s 69A of the Act and added the same to the income of the assessee in the assessment framed u/s 143(3) vide order dated 16.12.2019.

4. In the appellate proceedings, the Ld. CIT(A) confirmed the assessment order by holding that the AO has rightly made addition u/s 69A of the Act read with Section 115BBE of the Act.

5. The Ld. A.R vehemently submitted before the Bench that the assessee is doing genuine business of purchase and sale of sarees and facts qua the sale and purchase were duly placed before the AO. The Ld. A.R also submitted that the assessee has maintained proper books of account which were duly produced before the AO. The Ld. A.R submitted that cash was generated during the normal course of business and was deposited into the bank during demonetization period as the assessee is a small trader and was not in the habit of banking the entire sale proceeds. It is also true that the assessee has been doing all the transactions on cash basis. The Ld. A.R submitted that the AO has only stated that the gross profit of the assessee was very high and nowhere has rejected the books of account of assessee. The Ld. A.R submitted that the AO has applied the provisions of Section 69A of the Act while making the addition which deals with unexplained money not recorded in the books of account maintained by the assessee for any source of income and assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery or other valuable articles or the explanation offered by the assessee is not satisfactorily then the money and value of bullion, jewellery or other valuable article may be deemed to be the income of the assessee for financial year. However, this is not the case of the instant year. The Ld. A.R argued that in fact the sales were duly recorded in the books of account and the profit earned during the year from the business was offered to tax and due taxes were paid. Therefore at the very first place the invocation of section 69A is wrong as the same is not applicable to the case of the assessee. Therefore the Ld. A.R prayed that the addition so made under the wrong provisions of Act by misconstruing the provisions of law may be deleted by setting aside the order of Ld. CIT(A). Alternatively the Ld. A.R submitted that even if the addition is made by AO under

wrong section then the same cannot be corrected by making the addition in the different sections which may be the correct as per the Act. The Ld. A.R submitted that undoubtedly the provisions of Section 69A were not applicable to the present case. In defense of arguments the Ld. A.R relied on the decision of Co-ordinate Bench in the case of JMK Exports vs. ACIT in ITA NO. 1428/Del/2021 for AY 2017-18 dated 26.03.2024. Further he submitted that sales were not doubted by the AO and therefore how there can be a double addition first by way of profit on such sales and thereafter by adding the entire amount of cash sales deposited during demonetization period by placing reliance on the decision of Co-ordinate Bench in the case of ITO vs. Joydeb Kundu in ITA No. 8/Kol/2021 for AY 2017-18 dated 16.05.2023. The Ld. A.R therefore prayed that in view of aforesaid proposition and the case laws the order of Ld. CIT(A) may be set aside and the AO may be directed to delete the addition.

6. The Ld. D.R on the other hand submitted that the assessee has not done any business and coined a concocted and fabricated story. The Ld. D.R referred to the preceding and succeeding assessment years and submitted that the assessee was not having any turnover/sales as were shown during the year. The Ld. D.R therefore prayed that the order of Ld. CIT(A) may kindly be affirmed.

7. After hearing the rival contentions and perusing the material on record including the decisions cited before us, we observe that the assessee has shown to have done trading in sarees in Kolkata. We also note that all the transactions of sale and purchases were made in cash and the assessee has also maintained the books of account and recorded the transactions as regards purchase and sales therein. This is undisputed that the cash deposited in to the bank account of assessee was out of cash books and a finding to that effect has been given by the AO as well. We also note that the AO has not rejected the books of account and even sale was not doubted. Therefore the action of the AO by adding the cash sales u/s 69A amounted to double addition which is not permissible under the Act. First by way of accepting the sales and secondly by way of making further addition towards cash sales u/s 69A of the

Act. The case of assessee finds support from the decision of Co-ordinate Bench in the case of ITO vs. Joydeb Kundu (supra) wherein the Hon'ble Bench has held as under:

*“8. We have carefully gone through the material available on record and considering the rival submission made by the parties, in the present case both the authorities below accepted the fact that the amount received by assessee are nothing but sale proceeds in the course of business of the assessee. The addition has made only on the basis that after demonetization, the demonetization note could not have been accepted as valid tender. Since the sales proceeds for which cash was received are added u/s 69A of the Act which would amount to double taxation once as sale and another against as unexplained cash credit which is violate principles of taxation. The ld. AR further contended that Hon'ble ITAT of Kolkata in the case of ITO vs M/s. Senco Alankar in ITA No. 10/Kol/2021 dated 27.06.2022 on an identical fact held as under:*

*“7. We have heard the rival submissions and carefully considered the material placed on record and gone through various judicial precedents relied upon by both the parties. At the outset, we find that the moot point for consideration is in respect of explanation furnished by the assessee regarding nature and source of cash deposit to the tune of Rs.1,95,03,291/- (Rs.3,87,69,800 – Rs.1,92,66,509) during the demonetization period which has been treated as deemed income of the assessee and added to the total income u/s. 69A of the Act as unexplained money. We find that written submissions and all the relevant documentary evidences were placed on record.*

*7.1 The foremost point which invites our attention is the computation method adopted by the AO in arriving at this figure of Rs.1,95,03,291/- which is nothing but based on a hypothesis to arrive at estimated probable sales value that could have been made on 08.11.2016 between the time window from 8.30PM to 12 midnight and the entire day. As discussed above, Ld. AO has made certain assumptions on the logistics and the conduct of business transactions/operations to arrive at this probable sale value estimation. We find that the assumptions so made by the Ld. AO are devoid of any scientific basis and third party comparable which gives credibility to such an estimation. All these assumptions and calculations carry AO's own figment of imagination. We note that the assessee has countered all the assertions and assumptions made by the AO by submitting the details from its audited books of accounts and stock registers by providing all the relevant details from time to time. We note that the assessee had given all the explanations which are reasonable and there is no other material except for the estimation of probable sales value done by the Ld. AO for the purpose of treating the deemed income as unexplained money in the hands of the assessee. We also note that assessee has duly recorded in its books of accounts all the sales made on the date of announcement of demonetization in the time window available on that day which has been credited in the P&L Account. It is also noted that the assessee had stock in hand to meet the sales demand, all of which is duly recorded in the stock register furnished before the authorities below. It is also noted that there is no specific discrepancy pointed out in respect of the books of account, more particularly when the purchases have not been doubted in the assessment. Ld. AO has noted that details of customers on the invoices raised during the time window on the date of announcement of demonetization were not recorded on the invoices for some of the instances wherein the details were recorded, summons were issued to those customers, most of which remained unreplyed. We note that all the sales were cash sales and in case of cash transactions of sale, delivery of goods is*

*taken against the cash payment and it is hardly necessary for the seller to bother about the name and address of the purchaser.*

*7.2 We further observe that the assertion of the ld. AO on the mere possibility of assessee earning considerable amount out of cash sales on the date of announcement of demonetization is a pure conjecture on the part of the AO and is based on surmises, speculating on the approach adopted by the assessee. Rather, the estimation approach of arriving at probable sales value by the Ld. AO cannot be rationally inferred to justify the addition so made. Thus, we find that the Ld. AO indulged in suspicion, conjecture and surmises and acted without any evidence and upon a view of facts which cannot reasonably be entertained. It is a settled position of law that in making the assessment, the AO is not entitled to make a pure guess and make an assumption without reference to any evidence or any material at all. It has been consistently held by various Hon'ble Courts that there must be some matter more than their suspicion to support the assumption made u/s. 143(3) of the Act. We find force from the decision of Hon'ble Apex Court in the case of Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC) wherein it was held as under – “The mere possibility of the appellant earning considerable amounts in the year under consideration was a pure conjecture on the part of the Income-tax Officer and the fact that the appellant indulged in speculation (in Kalai account) could not legitimately lead to the inference that the profit in a single transaction or in a chain of transactions could exceed the amounts, involved in the high denomination noted, - this also was a pure conjecture or surmise on the part of the Income-tax Officer. It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicion, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this court is entitled to interfere.”*

*7.3 Ld. Counsel pointed out that assessee had all the capabilities, infrastructure, manpower, process and procedures to handle and deal with high volume of customers during small time window available to it. For comparability of the circumstances which existed on the day of demonetization announcement, he pointed to the occasion of Dhanteras which is a festival wherein similar kind of high traffic volume of customers happens for the purchase and sale of gold/bullion/jewellery, it being an auspicious day for making such investments. It was placed on record that on the day of Dhanteras which fell on 28.10.2016 i.e. prior to the day of announcement of demonetization, sales bills to the tune of 229 numbers were generated while dealing with those many customers which was also during the smaller time window available on that day depending on the muhurats. It was also pointed out that the VAT returns filed by the assessee for the year under consideration have not been revised in any manner so as to reflect any kind of adjustment or accommodation made in the accounted data of the assessee. All these facts and explanations were placed before the lower authorities, copies of which are placed in the paper book at page 19 to 28 and 52 to 75.*

*8. Keeping in view the above mentioned peculiar facts and circumstances of the case, the guess work adopted by the ld. AO in arriving at probable sales value and the judicial precedents relied upon, we find no reason to interfere with the factual findings given by the Ld. CIT(A) in deleting the addition of Rs.1,95,03,291/- made by the ld. AO. Accordingly, the appeal of the revenue stands dismissed.”*

8. On the issue of wrong invocation of provisions of Section 69A the Act, we observe that the same is not applicable to the transactions recorded in the books of accounts maintained by the assessee. For the sake of convenience the provisions of section 69A are extracted as below:

*69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.]*

8.1. A perusal of above section reveals that it deals with unexplained money in the form of bullion, jewellery or other valuable articles which are not recorded in the books of account if maintained by the assessee for any source of income and the assessee has not offered any explanation about nature and source of acquisition of money, bullion, jewellery or other valuable article but in the present case, the facts are quite clear that the assessee has shown the receipt of money from cash sales which has been duly accounted in the books of accounts. In the case of JMK Exports (supra) wherein the it has been held as under:

*“19. In the facts of the present appeal, it is an admitted factual position that the disputed transactions are duly recorded in the books of accounts of the assessee. Therefore, at the very threshold the provisions of section 69 will not get attracted. In fact, learned Standing Counsel appearing for the Revenue fairly accepted aforesaid factual and legal position. In any case of the matter, both the Assessing Officer and learned First Appellate Authority have proceeded on the premise that the credit entries appearing in the books of account are unexplained cash credit u/s. 68 of the Act. It is quite patent and obvious that provisions contained u/s. 68 and 69 of the Act operate in different situations and conditions therein are also different. Therefore, when it was never the case of the Department that the disputed addition has to be treated as unexplained investment u/s. 69 of the Act, at the second appellate stage, a new dimension cannot be given to the disputed issue by converting the addition from section 68 to section 69, that too, without providing an opportunity of being heard to the assessee. More so, when applicability of section 69 was never within the purview of the Tribunal and not even the case of the Department. I don't intend to deal further on the issue as to whether the Tribunal has powers to change the provision under which the addition has been made by the Departmental Authorities as it is academic in the present case considering the fact that the conditions of section 69 are not satisfied.”*

Considering the facts of the case in the light of the above decisions , we are of the view that the order passed by the AO is not sustainable under the law on two counts: i) that provision of section 69A were wrongly invoked by wrong interpretation of the provisions of the Act and ii) that the addition would result in double taxation of the same sales which is not permissible under the Act as has been discussed hereinabove. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 13<sup>th</sup> June, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 13<sup>th</sup> June, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ragini Verma, C/o, Shri Jitendra Kaushik, Advocate, 19D, Muktaram Babu Street, Kolkata-700007
2. Respondent – ACIT, Circle-9, Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata