

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "SMC", LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.112/LKW/2023

A.Ys. 2017-18

Suneel Kumar Agarwal, Old Galla Mandi, Lakhimpur Kheri-262701  PAN AGFPA 3061J  (Appellant)	Vs.	Income Tax Officer-3(5), Lakhimpur - Kheri    (Respondent)
---	-----	---

Appellant by	Shri P.K. Kapoor, CA
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT( DR)
Date of hearing	20/03/2024
Date of pronouncement	13/06/2024

**ORDER**

This appeal has been preferred by the assessee against order dated 10.02.2023 passed by the Ld. Commissioner of the Income Tax (Appeal) [hereinafter called the 'CIT(A)'], Lucknow-3 for Assessment Year (AY) 2017-18.

2.0 The brief facts of the case, as appearing from the assessment order, are that the assessee is engaged in trading of edible oil, food grains, khandsari, sugar, atta, maida and suji etc. A warrant u/s. 132A of the Income Tax Act, 1961 (hereinafter called the 'Act') was served on the assessee on 02.02.2017 and a sum of Rs.14,64,000/- was seized from the possession of the assessee.

Earlier, the assessee was intercepted by the Flying Squad and surveillance team at District Amethi, Pratapgarh Road, near Sahjipur crossing on 27.01.2017 during the Assembly Elections, 2017. Subsequently, notice u/s. 153A of the Act was issued asking the assessee to furnish his return of income for the captioned assessment year. In response thereto, the assessee submitted a copy of e-filed Income Tax Return which had already been filed in terms of Section 139(1) of the Act, wherein the assessee had shown an income of Rs.3,03,297/-. The turnover had been shown at Rs.3,95,81,706/- on which gross profit of Rs.6,36,774/- and Net Profit of Rs.2,68,298/- had been worked out. The assessee was required to provide complete details of cash amount of Rs.14,64,000/- seized from his possession.

2.1 Before the Assessing Officer (AO), it was the assessee's submission that the assessee was carrying the cash amount of Rs.14,60,000/- on the way from Pratapgarh to Lakhimpur Kheri and the same had been received by three parties as under:

"A.	M/s. Varnwal Traders, Pratapgarh	Rs.1150000.00
B.	M/s. Jaiswal Traders, Sultanpur	Rs.200000.00
C.	<u>M/s. jai Kanha Trading Company, CSM Nagar</u>	<u>Rs.110000.00</u>
	Total	Rs.1460000.00"

2.2. It was the assessee's submission that the assessee had sold goods to the above three parties during the financial year and payment was due from them. It was further submitted before the Assessing Officer that the assessee had visited these three parties and had collected the same in cash due to there being a National Holiday on 26<sup>th</sup> January, 2017 and closure of Bank on that day. The assessee also submitted before the Assessing Officer that all the cash entries were duly vouched and were entered into books of account of the purchasers. The assessee also enclosed copies of certificates issued by the parties. However, the Assessing Officer noted that the supply of goods to all the three parties had been made on 24.01.2017 and, therefore, the assessee's visit to these three parties for the purpose of realization of payment of the outstandings on 26.01.2017 did not hold any practical ground, as the time gap between the sale to the parties and the realization of cash was too short. Subsequently, the Assessing Officer rejected the various submissions and contentions of the assessee and noted that the assessee had failed to furnish any document to establish that the amount seized from the assessee pertained to cash out of sale proceeds. The Assessing Officer proceeded to add

the amount of Rs.14,64,000/- seized from the possession of the assessee to the income of the assessee as unexplained cash.

2.3. Aggrieved, the assessee proceeded to challenge the addition before the Ld. First Appellate Authority. However, the ld. CIT(A) observed that the facility of NEFT/RTGS or IMPS were available 24 X 7 and, therefore, the assessee's contention that the amount could not be collected through Banking channel for the reason of being a National Holiday on account of Republic Day on 26<sup>th</sup> January did not hold good. The ld. CIT(A) further noted that the assessee could not establish any urgency as to why he could not have waited for two more days to get the payments through the banking channel. The assessee's appeal was accordingly, dismissed.

3.0 Aggrieved, the assessee has now approached this Tribunal challenging the act of dismissal of appeal by the ld. CIT(A) by raising the following grounds of appeal:

*"1 Because the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 14,64,000/-made by the Assessing Officer under section 69A of the Income Tax Act, 1961 on account of unexplained cash found in the possession of the assessee.*

*2. Because as per material and information placed on record of the authorities below, it is clearly evident that the*

*sums aggregating Rs.14,64,000/- were collected by the assessee from his customers against bills raised on them and the same having been July accounted for as collection of book debts no addition of the said amount under section 69A was called for.*

*3. Because on a due consideration of material and information placed on record of authorities below, the Ld. CIT(A) ought to have deleted the wrongful addition of Rs.14000/- made the Assessing Officer by invoking the provisions of section 69A of the Act.*

*4. Because on the facts and in the circumstances of the case the addition of Rs.14,64,000/-has resulted in double addition to the same amount ie. once in the form of sales credited to Profit & Loss account and secondly addition made under section 69A*

*5. Because the Ld. CIT(A) has passed the impugned order without appreciating the submissions made and material and information placed before him during the appellate proceedings.*

*6. Because the order passed by the Ld. CT(A) is based on presumption, surmises and conjectures.*

*7. Because the order appealed against is contrary to facts, law and principles of natural justice.”*

4.0 The ld. Authorized Representative (AR) submitted that both the Assessing Officer as well as ld. CIT(A) had ignored the confirmations received from the three parties, wherein they had specifically confirmed that they had made the payments in cash in respect of the invoices for supply of sugar, which are placed at Pages 44, 45 and 46 of the paper book. My attention was also drawn to the copies of three invoices placed at Pages 7 to 9 of the

paper book and it was submitted that the cash pertained to the payments received against these three invoices and it was further submitted that both the lower authorities had completely ignored these documentary evidences. The Id. Authorized Representative further argued that, in effect, the lower authorities had only preferred to adjudicate the issue on the probability, rather than place reliance on the specific documents furnished before them. My attention was also drawn to the copy of Bank statement of the assessee, placed at page 42 of the paper book, and it was pointed out that there were no transactions in the said bank account, apart from regular debit of interest and, therefore, the observation of the Id. CIT(A) that 90% of the transactions of the assessee were through banking channel was factually incorrect. It was further argued that the fact remained undisputed that the assessee had sold sugar to the three parties and the same was very well established from the books of account of the assessee and was also not controverted by the Departmental authorities.

4.1 Drawing my attention again to the three invoices, the Id. Authorized Representative further submitted that there was no credit period stipulated in these three invoices and, therefore, the

assessee cannot be held at fault for visiting the establishment of the three parties for collecting payments in cash. The ld. AR also drew my attention to copy of RBI Circular No. DPSS(CO)RPPD No. 1097/04.03.2001/2019-20 dated 06.12.2019 and it was submitted that the contention of the lower authorities that banking facilities were available 24 X 7 on the date of seizure of cash was factually incorrect in as much as, as per this Circular, it was very much evident that 24 X 7 facilities were available only w.e.f. 16<sup>th</sup> December, 2019. The ld. AR prayed that, therefore, in the light of these documentary evidences, the Department had made the addition incorrectly and the same needed to be deleted.

5.0. Per contra, the ld. Senior Departmental Representative vehemently supported the orders of both the lower authorities and also relied on the Hon'ble Apex Court's judgments in the case of 'Sumati Dayal vs. CIT' reported in 214 ITR 801 (SC) and another judgment in the case of 'CIT vs. Durga Prasad More' reported in 82 ITR 540 and submitted that the strong circumstantial evidence was against the assessee and, therefore, the addition had rightly been made.

5.1 The ld. DR further submitted that the contention of the assessee that the cash was required for emergency purpose was an after- thought as the assessee was intercepted on 27<sup>th</sup> January i.e. one day after collecting the cash and, therefore, had there been a real emergency, the assessee would have returned the same day. It was further submitted that since the assessee was roaming around with cash in the same area even after one day, the possibility of misuse of unaccounted cash in the elections cannot be ruled out. It was also submitted that 24 X 7 NEFT facility was not required and even if the NEFT transaction was made on 27<sup>th</sup> January, money would have been credited in the assessee's account on the very same day. The ld. DR argued that no emergency would have compelled the assessee to collect cash by travelling a distance of more than three hundred kms. away from home. The ld. Senior D.R. vehemently argued that the appeal of the assessee deserved to be dismissed.

6.0 I have heard both the parties and have also gone through the record. It is not in dispute that the assessee had sold sugar to the three parties on 24<sup>th</sup> January, 2017 in terms of invoices placed at pages 7 to 9 of the paper book. It is also apparent that

the Department has not controverted these invoices. Accordingly, the fact of the assessee having made the sales on 24<sup>th</sup> January is not in dispute. Further, a perusal of the Bank Statement of the assessee also shows that the assessee has mostly been dealing in cash and there are only a few entries in the Bank Statement of the assessee. Therefore, the observation of the lower authorities that the assessee collected most of his outstandings through banking channels is factually incorrect. A plain reading of the orders of both the lower authorities would show that both the lower authorities have harped upon the possibility of cash being carried for the purpose of misuse in elections but have completely ignored the documents produced before them evidencing the sales as well as the Certificates from three parties certifying that they had paid the outstanding amounts in cash to the assessee. Therefore, it is my considered opinion that the entire case of the Department rests on mere assumptions and presumptions and the same cannot be sustained. Once the assessee has discharged his onus by providing Certificates from the three parties evidencing that they had made cash payments against purchase of sugar, the same cannot be brushed aside on preponderance of probability without producing counter evidence. In fact, the onus

was on the Department to establish that the evidence provided by the assessee was fabricated. It is worthwhile to point out that the Assessing Officer (AO) did not make any independent enquiry on his own before reaching the conclusion that the seized cash was to be utilized for election purposes. Secondly, the AO or the Ld. First Appellate Authority has not doubted that sales had been made corresponding to the seized cash. Thirdly, neither the AO nor the Ld. First Appellate Authority have given any reason for discarding the Certificates from the three parties confirming that they had paid cash to the assessee.

6.1 It is settled law where an evidence is of on overwhelming nature, and is conclusive, there can exist no dispute, nor shall there be any doubt. In such a situation, the assessee cannot be condemned on preponderance of probability. The Hon'ble Apex Court in the case of 'Krishna Nand Agnihotri vs. State of Madhya Pradesh' (1997) 1 SCC 816 held that it is not enough to show circumstances which might create suspicion because the Court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence. Therefore, in view of the above, I am unable to concur with the orders of the lower authorities and

I set aside the order of the ld. CIT(A) and direct the Assessing Officer to delete the addition.

7.0 In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 13/06/2024)

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Aks –  
Dtd. 13/06/2024

*Copy of order forwarded to:*

- |                          |  |
|--------------------------|--|
| (1) <i>The appellant</i> | (2) <i>The respondent</i>              |
| (3) <i>Commissioner</i>  | (4) <i>Departmental Representative</i> |
| (5) <i>Guard File</i>    |  |

Assistant Registrar