

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 664/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Sher Singh M/s Novelty Sweets Guggar, Palampur(HP)	बनाम	The ITO Ward, Palampur
स्थायी लेखा सं. / PAN NO: AFLPS1759J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashwani Kumar, C.A
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 18/06/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 24/06/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the assessee who is a person resident in India. The relevant assessment year is 2017-18 corresponding to the Financial Year 01/04/2016 to 31/03/2017. The assessee is trading in sweets business. The assessee has filed the present appeal under section 253 of the Income Tax Act, 1961 as he is aggrieved by order No. ITBA/NFAC/S/250/2023-24/1056278298(1) of Ld. CIT(A)/NFAC which is dt. 19/09/2023 passed under section 250 of the Income Tax Act, 1961 in the first appellate proceedings. Hence this second appeal under the Income Tax Act, 1961.

2. As stated above the assessee had declared income from trading in sweets business. He had filed an e-return of income for A.Y. 2017-18 whereby he declared a total income of Rs. 13,16,650/- on 26/10/2017 . The same was processed at the returned income on 16/11/2017.

3. The Income Tax Department based on information available during the course of the assessment proceedings in case of Shri Ranjan Kumar PAN No. AHIPK9826B which was selected for limited scrutiny through CASS for the reasons " cash deposit during demonetization period" found out that a bank account No. 0375008700057910 maintained in PNB, Palampur belonged to Sher Singh Prop. Novelty Sweets, Palampur, Dist: Kangra, H.P. in which cash amounting to Rs. 44,50,000/- was deposited during the demonetization period. Therefore statement of Shri Sher Singh was also recorded under section 131 of the Income Tax Act, 1961 on oath wherein he admitted the fact that the above bank account No. 0375008700057910 belonged to him in which he had deposited the cash amounting to Rs. 44,50,000/- during the demonetization period.

4. Accordingly, the case has been re-opened for assessment after recording reasons and taking necessary approval from competent authority and a notice u/s 148 of the Income Tax Act, 1961 was issued on 30/03/2021 through ITBA portal and which was duly served to the assessee on 31/03/2021.

5. That Assessee has filed his return of Income in response to the notice u/s 148 declaring total income of Rs.13,16,650/- on 23/04/2021. Notice u/s 143(2) has been issued on 25/06/2021. Thereafter notices u/s 142(1) on various dates were issued through ITBA portal and were served to the assessee on available Email ID and his e-filing portal account on various dates.

In view of non compliance to the statutory notices u/s 142(1) dated 10/12/2021 and 23/12/2021, penalty proceedings u/s 272A(1)(d) of Income

Tax Act, 1961 has been initiated and show cause notice was issued separately.

6. In response to the notices under section 142(1) assessee has furnished details.

7. Assessee reply was considered by the Ld. AO and details so furnished were examined.

8. Cash deposit

The case has been reopened on the issue of cash deposit made in his bank account during demonetization period to the tune of Rs.44,50,000/-. Various details has been called for vide notices u/s 142(1) and assessee has been asked to explain the source of cash deposit along with documentary evidences. Reply of the assessee were examined. Assessee has submitted following data:

1	(a) Total cash deposit in Bank in F.Y. 2015-16	3189600.00
	(b) Total cash deposit in Bank from 01.04.2015 to 08.11.2015	1852500.00
	(c) Total cash deposit in Bank from 09.11.2015 to 31.12.2015	440000.00
2	(a) Total cash deposit in Bank in F.Y. 2016-17	9865981.00
	(b) Total cash deposit in Bank from 01.04.2016 to 08.11.2016	2581000.00
	(c) Total cash deposit in Bank from 09.11.2016 to 31.12.2016	4470000.00
3	(a) Percentage Increase between 1(a) and 2(a)	309 %
	(b) Percentage Increase between 1(b) and 2(b)	139%
	(c) Percentage Increase between 1(c) and 2(c)	1016%

1	(a) Total cash sales in F.Y. 2015-16	5454016.50
	(b) Total cash sales from 01.04.2015 to 08.11.2015	3461802.00
2	(a) Total cash sales in F.Y. 2016-17	11337161.00
	b) Total cash sales from 01.04.2016 to 08.11.2016	5766363.00
3	a) Percentage increase between 1(a) and 2(a)	208%
	b) Percentage increase between 1(b) and 2(b)	167%

Month wise	Op. cash in hand	Cash sales including vat tax	Cash deposited in Bank	Cash with drawl from the bank	Closing cash on hand
April, 2016	120963.90	890162.00	475000.00	0	7220.90
May, 2016	7220.90	523856.00	285000.00	0	129631.90
June, 2016	129631.90	413073.00	345000.00	0	91289.80

July, 2016	91289.80	772915.00	245000.00	0	152070.50
August, 2016	152070.50	753163.00	450000.00	0	94301.50
September,2016	94301.50	589265.00	150000.00	0	138685.80
October, 2016	138685.80	1285909.00	281000.00	0	514380.80
November till 08.11.2016	514380.80	538020.00	350000.00	0	7,02,400.80

Assessee has stated that Rs.34,20,331/- has also been received from debtors during the period 01.11.2016 to 08.11.2016 and added it in cash in hand and has claimed that he had total cash of Rs.41,22,731/- at the end of 8th November 2016. Assessee has submitted copy of ledger account but not provided PAN of the parties. Hence cannot be cross verified. Assessee explanation of source of cash deposit during the demonetization period to the tune of Rs.44,70,000/- is not satisfactory in respect of and hence it is not acceptable for following reasons:

1. Percentage Increase of Total cash deposit in Bank in F.Y. 2015-16 to FY 2016-17 is 209%. Percentage Increase of Total cash deposit in Bank from 01.04.2015 to 08.11.2015 and from 01.04.2016 to 08.11.2016 is 39%. However, Percentage Increase of Total cash deposit in Bank from 09.11.2015 to 31.12.2015 and from 01.04.2016 to 08.11.2016 is 916%.
2. Percentage increase of Total cash sales in F.Y. 2015-16 and F.Y. 2016-17 is 108%. Percentage increase of Total Total cash sales from 01.04.2015 to 08.11.2015 and from 01.04.2016 to 08.11.2016 is 67%. Percentage increase of Total cash sales from 01.04.2015 to 08.11.2015 and from 01.04.2016 to 08.11.2016 is 67%.
3. Cash sales during the period 09/11/2015 to 31/12/2015 is Rs.7,95,796/- however for same period in 2016 is 14,14,332/- i.e 78% jump.
4. Assessee has not explained above increase satisfactorily as total income of the assessee has not increased in same ratio.

In view of the above, the source of the cash of Rs.44,70,000/- deposited in bank account by the assessee during demonetization period remained unexplained. Therefore, Rs.44,70,000/- is added to the total income of the assessee u/s 69A of income tax act, 1961 as unexplained money and taxed as per provisions of section 115BBE i.e taxed @ 60%. Penalty proceedings u/s 271AAC(1) is also initiated for addition of Rs.44,70,000/- which is taxed as per provisions of section 115BBE of Income tax Act, 1961.

4.1 A show cause notice dated 22/03/2022 along with draft assessment order with above proposed addition/modification was sent to assessee and compliance date was fixed on 28/03/2022. Assessee has replied on 28/03/2022. Assessee has reiterated its earlier reply and explanation. Assessee has submitted VAT return copy and VAT assessment order to support his explanation. Assessee has also cited some case laws and stated that cash sales if deposited in bank account can never be treated as unexplained income or unexplained investment as per section 68 and 69A when there are no defects found in the books of accounts.4.2 Assessee reply has been considered but not found

acceptable. Facts of the Case laws cited by the assessee is not similar to the instant case. In instant case assessee has submitted comparative figures of sales, cash sales, cash deposits for FY 2015-16 and 2016-17 on the basis of the books of accounts. Detailed observation has been discussed in para 4 above. On the basis of these observations, assessee explanation is not acceptable that the source of cash deposits were out of cash sales and receipts from debtor. Assessee has again failed to provide debtors PAN. Therefore proposed addition of Rs. 44,70,000 to the total income of the assessee u/s 69A of income tax act, 1961 as unexplained money and taxed as per provisions of section 115BBE i.e taxed @ 60% as discussed in draft assessment order is hereby confirmed. Penalty proceedings u/s 271 AAC(1) is also initiated for addition of Rs.44,70,000/- which is taxed as per provisions of section 115BBE of Income tax Act, 1961.

5. After examining the records available and information/documents and explanation submitted by the assessee and to the above remarks, total income assessed as under:

Total Income As per return:	Rs. 13,16,650/-
Ad: as discussed in para 4 above U/s 69A:	Rs.44,70,000/-
Total Income:	Rs.57,86,650/-

9. The assessee being aggrieved by the aforesaid order of Ld. AO dated 29/03/2022 prefers an first appeal before the Ld. CIT(A) who by an order dt. 19/09/2023 has sustained the finding of the Ld. AO supra.

10. Be it noted that in Form No. 35 form of appeal before Ld. CIT(A) the assessee as Proprietor of Novelty Sweets, Palampur, Dist: Kangra, H.P. interalia had raised following ground of appeal (a) **under section 147 as " That in the facts and circumstances of the case the Ld. Assessing Officer is not justified in reopening the case of the assessee under section 147 read with section 148 of the Income Tax Act, 1961. The reopening of the case is bad in law and facts"** and (b) **under section 69A as " That in the facts and circumstances of the case the Ld. Assessing Officer is not justified in adding back a sum of Rs. 44,70,000/- holding the cash deposit in the bank of the assessee as an unexplained money under section 69A of the Income Tax Act, 1961. That the order of the Ld. Assessing Officer is bad in law and facts."**

11. The Ld. CIT(A) in his order dt. 19/09/2023 supra has held as under:

7. Ground No. 2 relates to the sole addition u/s 69A of the Act of Rs.44,70,000/- deposited as cash during demonetization period. It is seen that the AO has passed a speaking and well-reasoned Order in the case. The appellant failed to prove during assessment and appellate proceedings that the money deposited in the account was linked to his sale receipts and receipts from debtors as claimed by him. Merely providing copies of ledger accounts of debtors and VAT documents cannot prove the link between the cash deposited during the demonetization period and his business receipts. The appellant has not taken any pains to provide evidence / documents in support of his grounds of appeal during appellate proceedings despite opportunities provided to him. The appellant thus failed to discharge the onus that squarely lay upon him. Merely by filing appeal against the addition and raising grounds thereon, he has not discharged his duty.

7.1 It is the duty of the appellant to furnish corroborative evidence / document to substantiate its grounds of appeal which the appellant failed to do. The Hon'ble Supreme Court has observed in the case of CIT vs. B.N. Bhattacharya (118 ITR 461) that "preferring an appeal means more than formally filing it but effectively pursuing it".

7.2 In the case of Sanjay Kapoor vs. ACIT (2022) 138 [taxmann.com](#) 207 (SC), the Hon'ble Delhi High Court held that "... The petitioner herein had admittedly deposited Rs. 11,40,000/- in cash in his bank account. Though the said entry is reflected in the Return of Income, yet no supporting evidences are available to prove the source of deposit. Consequently, this Court is of the view that in the present case there is reason to believe that income otherwise chargeable to tax has escaped the assessment...". The Hon'ble Supreme Court dismissed the SLP filed against this as withdrawn.

7.3 In the case of K. Chinnathamban (2007) 162 Taxman 459 (SC), the Hon'ble Supreme Court held that "The onus of proving the source of deposit primarily rests on the person in whose name the deposit appears in various banks.". Thus, burden of proof lies on the assessee / beneficiary. In this decision, the Hon'ble Supreme Court held that "In order to find out whether the assessee is the owner of any money in terms of section 69A of the said Act, the principle of common law jurisprudence in section 110 of the Evidence Act, 1872 can be applied. In the case of Chuhar Mal vs. CIT (1998) 3 SCC 588 it has been held by this Court that the word 'Income' in section 69A of the Income Tax Act has wide meaning which meant anything which came in as gain... the assessee did not adduce any evidence to show that the aforesaid amount did not belong to him...".

7.4 It is pertinent to mention the decision of Hon'ble Supreme Court involving the similar circumstances in the case of Chuharmal vs Commissioner of Income-tax [1988] 38 Taxman 190 (SC)/[1988] 172 ITR 250 (SC)/[1988] 70 ... [1988] 38 Taxman 190 (SC), wherein it was held as under:

"8. Section 69A of the Act was inserted in the Finance Act, 1964, and it came into force with effect from 1-1-1964. The High Court has rightly held that the expression 'income' as used in section 69A, has wide meaning which meant anything which came in or resulted in gain. Hence, in the facts of this case, a

legitimate inference could be drawn that the assessee had income which he had invested in purchasing the wrist-watches and, as such, that income was subject to tax. In the view, the High Court was justified in justifying the Tribunal's holding that the assessee was the owner of the wrist-watches and, thus, including the value in the assessment of the income of the assessee as his wealth and so deemed to be the income of the assessee by virtue of section 69A coupled with surrounding circumstances. Therefore, inclusion of the money in purchasing the wrist-watches, that is to say, Rs. 87,455 was correct and proper for the assessment year under reference. In this connection, section 69A may usefully be set out as follows :

"69A. Unexplained money, etc.—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."

So far as the first question is concerned, the High Court answered accordingly and in our opinion rightly."

7.5 In the case of Smt. Srilekha Banerjee and other vs. CIT Bihar and Orissa 1964 AIR 697, the Hon'ble apex court held that the source of money not having been satisfactorily proved, the department was justified in holding it to be assessable income of the assessee from undisclosed sources. In the above case, it was further held by the Hon'ble Apex court that, the burden of proof was on the assessee which has not been discharged. The Hon'ble Supreme Court in the case of CIT, West Bengal-II v. Durga Prasad More 82 ITR 540 has stated that "it is true that the apparent must be considered real until it is shown that there are reasons to disbelief and the taxing authorities are entitled to look into the surrounding circumstances to find out the matter has to be considered by applying the test of human probabilities."

7.6 On the basis of material on record, it is seen that there was cash deposit in the account during demonetization period which was not explained by the appellant either at the assessment or appellate stage. In such a situation, in the facts and circumstances of the case, findings of the AO in the Assessment Order and judicial rulings in the matter, there is no reason to interfere with the findings of the AO as contained in the Assessment Order and the ground of appeal is dismissed.

8. In the result, the appeal is dismissed.

12. Being aggrieved by the aforesaid order No ITBA/NFAC/S/250/2023-24/1056278298(1) dt. 19/09/2023 the assessee has filed second appeal under section 253 of the Income Tax Act, 1961 in Form No. 36 which is Form of

Appeal to the Appellate Tribunal and interalia has raised following ground of appeal:

1. That order passed u/s 250 of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi is against law and facts on the file in as much as NFAC was not justified to decide the appeal ex-parte.

2. That the NFAC was not justified to arbitrarily uphold the action of the Learned Assessing Officer in making an addition of Rs. 44,70,000/- on account of cash deposited in the bank account during demonetization period.

Record of Hearing

13. The hearing took place before us on 18/06/2024 when both the parties appeared before us and canvassed their respective contentions.

14. The Ld. AR interalia contended that assessee is sole proprietor of M/s Novelty Sweets at Palampur, Kangra, H.P. and does trading of sweets mostly wholesale. The paper book from pages 1 to 99 have been filed containing copy of computation of income and the audited accounts for A.Y. 2017-18, copy of replies dt. 29/12/2021, 03/02/2022 and 28/03/2022 filed before Ld. AO during the course of the assessment proceedings. Copy of VAT returns, copy of accounts of some sundry debtors from whom cash was received prior to 07/11/2016 . Judgment of Hon'ble Chandigarh Benches in case of Rachit Aggarwal Vs. ITO reported in (2024) 162 Taxmann.Com 49(Chandigarh) and in case of Fashion Zone Vs. JCIT in ITA No. 331/Chd/2023 were placed on record. 14.1 The Ld. AR contended that source of cash deposit is debtors and sale. In so far as debtors are concerned **few extracts of ledger account of one "New Novelty Sweets"** has been placed on record from pages 39 to 81. These extracts of ledger accounts by and large shows debit balance of few parties. **The same bears signature of debtor's with their address.** The Ld. AR

further stated that remaining amounts are towards sale of sweets. Upon a query by Bench whether assessee is a retailer or wholesaler in sweet business? The Ld. AR replied that he is wholesaler. The Ld. AR then placed reliance on VAT returns of the assessee/ **New Novelty sweets** which are from pages 33 to 38. It is for period 01/04/2016 to 31/03/2017. VAT Return is relied upon to establish that sales have taken place and VAT is paid.

14.2 The Ld. AR finally placed reliance on judgment of ITAT Chandigarh Bench in ITA No. 331/Chd/2023 dt. 20/03/2024 in case of Fashion Zone Vs. The JCIT ward III(2) Ludhiana and relied upon para 12. He concluded his argument by stating that facts of Fashion Zone case are parimateria and in view thereof order of CIT(A) should be set aside. Per Contra the Ld. DR has strongly opposed the contention of Ld. AR. The Ld. DR on debtor's ledger account bearing signature and address of debtor's stated that each ledger entry is **manipulated and bogus** as by and large the cash amounts are deliberately shown **below Rs. 20,000/-** and that same are fabricated to cover up and offer an explanation on source of cash amount. In fact assessee has miserably failed to show genuine debtor's and no person in trade signs on ledger account in manner as is shown in the present case. It is expectation of the assessee that same should be treated as confirmation from debtor's. **Further PAN details are missing perse.** There is **no remark like accepted** on ledger account extracts. The address and signature on ledger extracts of debtors maintained by assessee as is shown does not prove source of cash funds at all.

14.3 The Ld. DR contended that papers and documents produced are all sham and make believe arrangements to establish source of fund which is all illegal and not proper. The order of Ld. AO and that of Ld. CIT is proper and legal. The same should be upheld in toto. In rejoinder the Ld. AR contended that there was sudden spurt in sales consequently cash income witnessed very sharp rise on account of Diwali festivities. There Ld.AR then contended that audited accounts are placed on record and no defect has been found by the Department. In VAT return sales are accepted. The amount of cash deposit of Rs. 44,50,000/- is just and legitimately earned during the year under consideration, sales are accepted and are reflected in books of account and that besides being whole seller of sweets the assessee sometime does retails too.

Findings and Conclusions

15. We now examine the legality, validity and propriety of order of Ld. CIT(A) dt. 19/09/2023.

16. We hold that in the original proceedings before Ld. AO and in the first appellate proceedings before Ld. CIT(A) the ledger account of the assessee of some of sundry debtors from whom cash was received prior to 07/11/2016 ought to have **been at least test checked as address of such person are appearing on extracts of ledger with their signature**. It appears this exercise of inquiry and verification has not been done. Such inquiry and verification ought to have been done so even if PAN details of such debtors are not provided for as the addresses are on record. Be it noted that Income Tax Act,

1961 provides a complete machinery for ascertaining correct truthful position. Further sales figures and other details are provided in the books of account, Form 3 CB, Form CD, Balance Sheet, computation of income, audited accounts, schedule forming part of balance sheet which has sales details, opening stock, purchase account, fix assets inventory etc are all verifiable details. Unfortunately this exercise was not done by any of the lower authorities despite material being available before him and so also powers under the Income Tax Act, 1961. The assessee has given explanations vide reply dated 29/12/2021, 03/02/2022 and 28/03/2022. These letters contents ought to have verified and cross checked but unfortunately this too has not happened. VAT return too was not taken into consideration and was also not verified and cross checked. Be that as it may a bare simple perusal of orders of lower authorities leads us to only one conclusion that order of Ld. CIT(A) is not a speaking order on merits. It is not a reasoned order on merits of the case. Considering cash income simplicitor under section 69A r.w.s 115BBE of the Income Tax Act, 1961 is an elaborate exercise which ought to have been done in a manner known to law.

16.1 The assessee's trade practice, nature of its business, etc ought to have been enquired and verified which too did not happen. Assessment includes inquiry and verification of records, making of the field inquiries and lot more. Department is not starved of coercive powers; which too can be exercised in a legitimate manner keeping in mind the interest of tax payer as paramount. Under these tiring circumstances, we are left with no other alternative but to

set aside the order of Ld. CIT(A) dt. 19/09/2023 and remit the file back to the Ld. CIT(A) to pass order afresh on denovo basis. Hope and trust the fresh order of Ld. CIT(A) would be a speaking order on merits after proper adjudication and adjudgment, accompanied by reasons on merits **including a finding on books of account as we notice different name in the style of business i.e; M/s Novelty Sweets Shop in Form No. 3CB and 3CD, New Novelty Sweets in VAT Returns and ledger extracts .**

17. Accordingly, impugned order of Ld. CIT(A) dt. 19/09/2023 is set aside as and by way of remand on denovo basis with a direction to pass a reasoned order on merits after taking into consideration all submissions of assessee including a hearing as soon as possible.

18. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24/06/2024

Sd/-

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलिय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar