

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. 527/Chd/2022  
निर्धारण वर्ष / Assessment Year : 2017-18

Sandeep Kumar Sanserwal H.No. 2/45, Vikas Nagar Yamuna Nagar-135001(Haryana)	बनाम	The ITO Ward-4, Yamuna Nagar (Haryana)
स्थायी लेखा सं. / PAN NO: AWVPS8446F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vibhor Garg, C.A  
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR  
सुनवाई की तारीख/ Date of Hearing : 16/05/2024  
उद्घोषणा की तारीख/ Date of Pronouncement : 03/07/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 03/05/2022 pertaining to Assessment Year 2017-18.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

"1. Because the action of dismissing the appeal is being challenged facts & law by upholding the determined assessed income at Rs 28,71,290/- plus Agricultural Income of Rs 15,50,360/- by making an addition of Rs 23,00,000/- by treating the same as cash credit u/s 68.

2. Because the action of dismissing the appeal is being challenged facts & law for invoking the provision of section 68 while the deposits of Rs 23,00,000/- are completely accounted, recorded, disclosed and declared having complete explanation being out of only and sole resource of business income meeting the test of nexus, character, purpose thus an unreasonable action prayed to be deleted.

3. Because the action of dismissing the appeal is being challenged facts & law for invoking the excessive rate of taxation than prescribed on dated 01.04.2017 through Finance Act 2016 on the additional income and the surrender has been obtained/procured on the assurance of no penalty, no prosecution on

payment of tax which having been done by the assessee, then subsequently charging taxation under section 115BBE is an unreasonable action at the hands of department.

4. Because the action of dismissing the appeal is being challenged facts & law since the source of the income is from the business and for the business as substantiated through the returns/ orders under HVAT,2003 and which pleading of the assessee is an accepted fact as per material on record resultingly the chargeability being made under section 115BBE is unwarranted.

5. Because the action of dismissing the appeal is being challenged facts & law for invoking the provision of section 115BBE on the additional income though the transactions are completely accounted, recorded, disclosed and declared having complete explanation being out of only and resource of business income meeting the test of nexus, character, purpose thus an unreasonable action prayed to be deleted.

6. Because the CIT(A) has wrongly upheld the assessment order without passing a speaking & reasoned order, thus in violation to Kranti Associates Pvt Ltd and another vs Sh Masood Ahmed Khan and others (2010) 9 SCC 496.

7. Because the action of dismissing the appeal is being challenged facts & law by recording, finding dehors the material on record & without giving opportunity for producing the sales invoices which are available with the assessee & can be produced before the Tribunal.

8. For any consequential relief and/or legal claim arising out of this appeal and for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same in the interest of substantial justice to the assessee."

3. Briefly the facts of the case are that the assessee, an individual, is the proprietor of M/s. Sansarwal Pharmaceuticals, having income from business and other sources. The assessee filed his return of income on 26/03/2018 declaring total income of Rs.5,71,290/- and agricultural income of Rs. 15,50,360/-. The return was processed u/s. 143(1) of the Act and thereafter, the case was selected for scrutiny under CASS and the notices u/s. 143(2) and 142(1) of the Act were issued calling for the necessary information/documentation which were filed / uploaded by the assessee through e-filing portal. The assessment was thereafter completed u/s. 143(3) on 28/12/2019 at an assessed income of

Rs.28,71,290/- and agricultural income of Rs. 15,50,360/- wherein the AO made addition of Rs. 23,00,000/- u/s. 68 r.w.s. 115BBE of the Act.

3.1 During the course of assessment proceedings, the AO found that the assessee maintained 2 bank accounts with Punjab National Bank Model Town, Yamunanagar Branch and Punjab and Sindh Bank, SNSPS, Yamunanagar wherein the assessee made cash deposits on 12/11/2016, 13/11/2016, 15/11/2016. each of Rs. 10,00,000/- and on 1/7/11/2016 of Rs. 3,00,000/- during the demonetization period in account no. xxxxxxx in Punjab & Sindh Bank, totalling to Rs. 33,00,000/-. The AO asked the assessee to explain and disclose with documentary evidence the source of such deposits made. The assessee in his submission contended that he was trading in medicine and also having agricultural income. For AYs 2017-18 and 2016-17, the assessee had not prepared any books of accounts and returns were filed u/s. 44AD of the Act, which did not prescribe maintaining of books of accounts. From 01/04/2016 to 31/03/2017, in the business current account maintained in the name of the M/s Sanserwal Pharmaceuticals deposits were made and total sales from 01/04/2016 to 31/03/2017 were made of Rs. 72,01,093/- and income was declared in the return of income being 8.35% of such sales at Rs. 6,01,291/-. It was also submitted by the assessee before the AO that he had agricultural income of Rs. 15,50,360/- during the year.

3.2 The AO, after carefully considering the contention of the assessee stated that the assessee had accepted cash deposits in Specified Bank Notes (SBNs) of Rs. 33,00,000/- during demonetization period from 09/11/2016 to 31/12/2016, that the assessee had not maintained any books of accounts claiming the return filed u/s. 44AD which did not require maintaining of books of accounts and that the assessee was doing retail business of chemist and the Government had allowed it to accept SBN currency notes during demonetization period. The AO thereafter found that during the year the assessee filed the details of cash sales

along with cash book and it was found that there were cash sales of Rs. 75,03,632/- during FY 2016-17. Month-wise of such receipts for the year vis-a-vis the cash deposits made month-wise had been given in para 7 of the assessment order showing the total cash sales of Rs. 75,03,632/- and total cash deposits of Rs. 73,20,964/-. The AO further noted that from the detailed chart as above, it was evident that the assessee had claimed huge cash sales of Rs. 37,97,504/- (i.e. Rs.18,50,659/- plus Rs. 19,46,845/-) from 01/10/2016 to 30/11/2016, just prior to demonetization period and during demonetization period to substantiate the assessee's cash holding and therefore there was unusual cash sale during the demonetization period. The AO accordingly show caused the assessee to explain the cash sale credited in the cashbook vide letter dated 07/12/2019. In the said show cause it was stated that during 1<sup>st</sup> and 2<sup>nd</sup> quarter ended 30/06/2016 and 30/09/2016, the assessee had shown sales of Rs. 9,32,943/- and Rs. 8,95,594/- respectively whereas in the third quarter ending on 31/12/2016, the assessee had shown sales of Rs. 40,41,772/- and hence there was an abnormal increase in sales in the third quarter during demonetization period which apparently was conversion of old currency of SBNs into legal tender. And therefore such deposit clearly proved to have been made from assessee's unaccounted income. It was therefore asked as to why cash deposit of Rs.30,00,000/- made in the account maintained with Punjab & Sindh Bank should not be treated as assessee's unexplained income from bogus sales. In response, the assessee re-iterated that the same was from his actual sale as he was trading in medicines including Veterinary medicines. It was explained that during the month of October and November, due to fever / epidemic spread and dairies, the cattle had suffered the epidemic and therefore there was sudden increase in sale in October / November and the assessee had sufficient stock for sale at that time. It was also stated that all the agricultural expenses and family household expenses were made from agricultural income in cash and the same was not used for depositing during demonetization period in the

bank. The AO, however, did not accept the contention of the assessee. The AO stated that the assessee had not submitted copies of sale bills in support of cash sales made during the month of October and November, 2017. The AO also stated that the pattern of cash sales clearly indicated that there was sudden spurt in cash sales on daily basis during 01/10/2016 till 30/1/2016. The assessee's claim that there was fever / epidemic spread and there is dairies during October and November and the cattle had suffered the epidemic and hence sale had increased then besides having sufficient stock with the assessee, was found to have no force since the corresponding sale during 01/04/2016 to 30/09/2016 was reported at Rs. 18,33,842/- being the monthly average of Rs. 3,00,000/- only against average sale in October and November, 2016 for 2 months of Rs. 19,00,000/- only. The AO also stated that no such evidence regarding epidemic in cattle during October and November, 2016 could be furnished by the assessee and therefore the AO contended that the assessee had manipulated cash sales in order to justify cash deposit during demonetization period. The assessee had failed to substantiate even single cash sale bill either by furnishing name or address or by producing any alleged purchaser for verification and therefore the said deposit in the garb of cash sales was unexplained cash and such submission of the assessee was concocted. The AO also pointed out that the assessee admitted of not depositing cash in bank account during demonetization period from agricultural income. The AO thereafter held that the cash deposits during demonetization were made by the assessee thereby manipulating his cashbook and the assessee made a deliberate attempt to justify his unexplained cash deposits and therefore the explanation furnished regarding the source of such high cash deposits by a concocted afterthought story was not acceptable.

3.3 At the same time, the AO had held that with respect to cash sale during the period between 01/10/2016 to 30/11/2016, the assessee had declared total

cash sales for 2 months of Rs. 37,97,504/- i.e. average per month of Rs. 18,92,752/-. The assessee further during 01/04/2016 to 30/09/2016 made total sales of Rs. 18,33,842/- for 6 months, there being monthly average sales of Rs. 3,00,000/- only. The AO further considered the assessee's explanation of epidemic / winter season etc. the factors, held that sales could be more during the months of October and November and the average cash sales for the said two months was taken by the AO of Rs. 5,00,000/- per month. The AO accordingly had considered that the assessee had sold medicines during the above two months of Rs. 10,00,000/- and therefore since the cash deposits were made out of such sales as claimed by the assessee in the bank account, the said amount of Rs. 10,00,000/- treated as normal business sales and explained. Therefore, out of the total bank deposits of Rs. 33,00,000/-, the balance amount of Rs. 23,00,000/- was treated as assessee's unexplained cash deposits in bank invoking the provisions of section 68 of the Act, thereby charging tax on the same u/s. 115 BBE of the Act.

4. Being aggrieved the assessee carried the matter in appeal before the Id CIT(A) and submitted copy of his ITR for AY 2017-18, copies of bank account of Punjab & Sindh Bank, copy of VAT return filed, certificate from J K Trust-Gramvikas Yojna regarding supply of veterinary medicine during epidemic (foot and mouth disease in cattle) and also similar certificate from milk dairy union in support of appellant's claim that regular sales made during the demonetization period had increased and therefore he had deposited the sale proceeds in cash to the bank account and such sales were made by him and accounted for on which tax was paid by filing return of income u/s. 44AD of the Act. It was contended that the appellant was not required to maintain the books of account under the said section and further detailing the prevailing circumstances of announcement of banning the SBNs of Rs. 500 and Rs. 1000, it

was contended that the appellant being a retail seller in medicines was permitted to sell the medicine in cash and as there was pandemic in cattle for which necessary evidences had been furnished, more medicines were sold and such sale proceeds had been deposited in the bank account. The appellant further referred to Article 14 and Article 19(1)(g) of the Constitution of India and the provisions of section 68 r.w.s. 115BBE of the Act and notes on Clause 45 of the bill, development occurring with effect from 08/11/2016, the extract of the Finance Act, 2018 relating to provisions u/s. 115BBE of the Act and object sought to be achieved by AO. It was contended that CBDT's Circular No. 3 of dated 20/01/2017 issued was an executive estoppel to the public at large and the same cannot be changed in the present arbitrary manner to the discretion of the adjudicating authority with reference to clarification regarding set off of losses against deemed undisclosed income. Further, CBDT's Circular No. 8 dated 26/12/2018 contending that the amendment of 2018 was supported by the said Circular and the Circular having been so issued was an executive estoppel to the public at large and the same could not be changed in an arbitrary manner. The appellant further contended that the abuse and misuse of jurisdiction thereby referring to the internal departmental communication and quoting therefrom. The appellant also made an effort to establish his case by making a detailed submission as quoted above that he had deposited the cash out of the sales and there was no manipulation of books of accounts so that the addition made by the AO on account of unexplained cash deposited in bank be deleted.

5. After taking into consideration the findings of the AO and the submissions so made on behalf of the assessee, the Id CIT(A) has returned the following findings which read as under:

"5.3 I have perused the assessment order and the submission of the appellant as above carefully. I find that the AO had analysed the facts of the case of the appellant relating to deposits made in Punjab & Sindh Bank during the demonetization period of Rs. 33,00,000/- in detail thereby considering the submission of the appellant made before the AO during assessment proceedings. The appellant's contention was that during pandemic of cattle (foot and mouth disease) the sale had increase during October and November, 2016 than in any other months of the year. The AO however stated that in these 2 months there was average sale of approximately of Rs. 19,00,000/- whereas prior to the announcement of demonetization from April to September 2016 there was average sale of Rs. 3,00,000/- per month. The AO however considered that for such pandemic the sales could have been increased by further Rs. 5,00,000/- during the months of October and November, 2016 than in other months. The appellant has made the various submission during appellate proceedings referring to Article 14 and 19 of the Constitution of India and also various CBDT's Circulars as stated above pertaining to the amendment made referring to the Finance Bill etc. I do not find that the said submissions made by the appellant had explained the nature of cash sales and cash deposits made by the appellant in the above mentioned bank during the demonetization period in totality. The facts were the appellant made cash deposits on 12/11/2016 of Rs. 10,00,000/-, on 13/11/2016 of Rs. 10,00,000/-, on 15/11/2016 of Rs. 10,00,000/- and on 17/11/2016 of Rs. 3,00,000/-, totalling to Rs. 33,00,000/-. It is not at all legible as to why the sales made during the month of October totalling to Rs. 18,50,659/- in cash had been deposited in the month of November, 2016 and only an amount of Rs. 2,71,206/- was deposited in bank in the said month. This very fact itself indicates that the sales invoices etc. if any had been prepared later on to substantiate the appellant's claim that there was genuine cash sales during the months of October and November, which was rightly held by the AO as manipulation of accounts and bogus sales only to justify the source of cash deposits. Further, when such sales were made in various other months as detailed in para 7 of the assessment order totaling to Rs. 75,03,632/- and in each such month the said cash sales had ranged from Rs.96,309/- (June, 2016) to highest sale of Rs. 5,51,490/- (July, 2016) throughout the FY 2016-17, the sales shown in October, 2016 and November, 2016 in cash of Rs.18,50,659/- and Rs. 19,46,845/- had rightly been considered by the AO as abnormal sales. The AO also had stated in the assessment order that the appellant had failed to substantiate even a single cash sales bill either by furnishing the name or address or by producing any alleged purchaser for verification. The appellant may contend that when there was cash sale and cash memo/ invoice / bill had been issued, there was no requirement of mentioning the name and address of the buyer but considering the fact that the SBNs of Rs. 500 and Rs. 1000 had been taken from circulation by the announcement of Government of India from night after 8:15 p.m. 08/11/2016, the appellant was required to be more cautious for accepting the SBNs for sales of medicines and further depositing the same to the bank account and should have kept all possible details and evidences to explain the source of such SBNs accepted from the buyers of medicines. I find that during the assessment proceedings the appellant made a submission before the AO about more sales during the month of October and November, 2016 than in other months for the pandemic in cattle in a casual manner as no such details and evidences could be furnished from any buyer so as to substantiate that the appellant had sold in cash to the extent as stated in the sales statement for the month of October and

November, 2016 to any Goshalas or Trust which had been carrying out the look after and maintenance of cattle. Two certificates obtained from J K Trust - GramvikasYojna and Milk Dairy Union as furnished during the appellate proceedings, in my considered opinion, do not explain the purpose sales of medicines in cash due to emergent need of pandemic during the above mentioned two months and so also the same could not explain the source of cash deposits made in the impugned bank in totality. The appellant also could have furnished a comparison of sales made by him during the FYs, 2014-15 and 2015-16 and further 2017-18 to establish his case that sales to the corresponding months in the said years were also increased as in this relevant assessment year. Instead of factually furnishing the relevant details with documentary evidences for explaining the source of such cash deposits, I find that the appellant made an exaggerated irrelevant submissions during the appellate proceedings as quoted above to substantiate the unexplained cash deposited by him in the impugned bank account as mentioned above. The said detailed submission, in my opinion, does not explain the source of cash deposits in the bank account of the appellant, which was the issue of dispute in this appeal. I also find that the appellant had cited a number of decisions in the submission as quoted above, which, in my considered opinion, are not applicable on the facts of the case of the appellant.

5.3.1 I further find that the AO after analysing the details of cash deposits made had given an edge to the appellant by considering the reasonable cash sales during October and November, 2016 at Rs. 10,00,000/- (Rs. 5 lakhs each). Considering all the facts as above, I hold that the AO had correctly treated the amount of Rs. 23,00,000/- as appellant's unexplained cash and had added the same to the total income. Having said so, I hold that the AO had invoked the provisions of section 68 of the Act wrongly holding such amount as appellant's unexplained credit, when the appellant had not maintained any regular books of accounts admittedly. When no books of account had been maintained by the appellant and the deposits were found to have been made in the bank, the AO should have invoked the provisions of section 69A of the Act as assessee's investment in bank from unexplained money. I therefore confirm the said addition made by the AO of Rs. 23,00,000/- u/s. 69A of the Act. The provisions of section 115BBE of the Act have been rightly invoked by the AO for charging tax on the deemed income added of Rs. 23,00,000/-. No interference in this regard baring my comment of invoking the provisions of section 69A of the Act as above in AO's findings is called for. Ground nos. 1 to 5 raised by the appellant are accordingly dismissed."

6. Against the said finings and directions of the Id CIT(A), the assessee is in appeal before us.
7. During the course of hearing, the Ld. AR reiterated the submissions made before the lower authorities. It was submitted that assessee is a proprietor engaged in the business namely 'Sansarwal Pharmaceuticals' being the sale veterinary medicines and additionally earning his income from agriculture too

and return of income was filed on 26.03.2018 for impugned assessment year declaring taxable income of Rs 5,71,290/- and agricultural income of Rs 15,50,360/-. During the impugned year under consideration, the assessee deposited cash amounting to Rs 33,00,000/- in the Current Account No. xxxxxxxx in Punjab & Sind Bank, SNSPS, Yamuna Nagar & Punjab National Bank, Yamuna Nagar during the demonetization period (09.II.2016 to 30.12.2016). It is relevant to state that most of the business transactions of the assessee are through the cash mode and as per the notification issued by the Govt. of India, the assessee is in the exempted category to collect SBN as admitted by the AO where he has stated that "As the assessee is doing retail business of chemist, the government has allowed to them to accept SBN currency during demontisation period." It was submitted that from the aforesaid amount of Rs 33,00,000/-, amount of Rs 10,00,000/- has been accepted by the AO as genuine cash sales deposited during demonetization period and treated the balance amount of Rs 23,00,000/- (Rs 33,00,000-10,00,000) as cash credit u/s 68 and added back to the income of the assessee, however the resource for aforesaid deposits of Rs 23,00,000/- are having complete explanation. It was submitted that additionally, computation of income was too furnished and these material facts containing material particulars are a matter of fact and the sale substantiated through the HVAT 2003 records supports the pleading of the assessee which is under the independent Act, wherein all the sales made by the assessee are accepted which is a fact on record, as is evident that out of total sale of Rs 72,01,093/-, the sales of Rs 50,01,481/- being the tax paid sales @ 5.25%. Further it is submitted that the certificate dt 25.11.2016 reveals in itself that there was an FMD (foot and mouth diseases) prevalent within the District of Yamuna Nagar and additionally the certificate of Milk Dairy Union dt 06.12.2019 even certifies this fact of FMD diseases and these different certificate from different resources uphold the contention of the assessee. The FMD diseases with the Distt. of Yamuna Nagar is matter of common knowledge as revealed from the media reports in the news

paper too. Even further it is submitted that the Deptt issued the letter of enquiry and pursuant to which the assessee furnished the reply regarding the sources of deposit of cash. Further the sales vouchers have been duly furnished for examination before AO and these are numbering about 2500 which can be furnished again though a wrong finding of fact has been recorded by AO, a fact reiterated before the Id CIT(A) which he has failed to appreciate. Further due to some epidemic in the animals namely foot & mouth diseases, the sales of the medicines increased for the assessee and out of the total sales, the assessee deposited about 1/2 half of the amount in the account and Deptt has accepted the deposits of Rs. 10.00 lacs only. It was submitted that the assessee has duly explained and established the nexus between sale made and cash deposit during October & November 2016 as per details below:

S.no	Month	Sales (Rs)	Cash deposited
1	October 2016	17,61,452	20,000
2	November 2016	18,53,888	34,48,000 (Rs 33,00,000 IN Punjab & Sind Bank & Rs 1,48,000 in Punjab National Bank )
	Total of Oct & Nov	36,15,340	34,68,000

7.1 It was submitted that out of above sales of October & November 2016, Rs 34,69,780/- were taxable @ 5.25% as per Indirect tax in Haryana Vat. VAT was duly paid on above sales as well. Such sales are duly accepted by Haryana Vat Department & Copy of Haryana Vat assessment order has been placed as part of the assessee's paperbook. It was submitted that the assessee held drug licence since 2005 for the whole & retail sales drugs. Latest / renewed copies of licence for the period 19.07.2015 to 18.07.2020 and w.e.f.19.07.2020 to 18.07.2025 to having been issued under rule 63(A), Form 21-C by the licensing authority Kurkshetra and the assessee dealing in these kind of veterinary drugs is an

accepted fact as recorded in the assessment order and the occasion to record such a finding was because all these facts were brought to the knowledge of the AO during course of assessment proceedings on dt 18.11.2019 and it was accordingly submitted that the cash so deposited was out of regular business transactions only and which are duly reported and offered to tax in the return of income and which has been accepted by the AO without any adverse findings.

7.2 In this regard, our reference was drawn to the return of income filed by the assessee under Section 44AD of the Act wherein the assessee has disclosed deemed profit @ 8% on the turnover of Rs. 72,01,093/- and it was submitted that where the cash so deposited is out of the declared sales and which has not been disputed and where the assessee was not required to maintain the books of account, the assessee was not under any obligation to explain nature of individual cash deposits as the necessary nexus with sales has been duly established and in this regard, our reference was drawn to the findings of the Hon'ble Jurisdictional High Court in case of CIT Vs. Surinder Pal Anand (2010) 192 Taxman 0264 wherein the Hon'ble High Court has held as under:

*"7. Sec. 44AD of the Act was inserted by Finance Act, 1994 w.e.f. 1st April, 1994. Sub-s. (1) of s. 44AD clearly provides that where an assessee is engaged in the business of civil construction or supply of labour for civil construction, income shall be estimated at 8 per cent of the gross receipts paid or payable to the assessee in the previous year on account of such business or a sum higher than the aforesaid sum as may be declared by the assessee in his return of income notwithstanding anything to the contrary contained in ss. 28 to 43C of the Act. This income is to be deemed to be the profits and gains of said business chargeable of tax under the head "Profits and gains of business". However, the said provisions are applicable where the gross receipts paid or payable do not exceed Rs. 40 lacs.*

*8. Once under the special provision, exemption from maintaining of books of account has been provided and presumptive tax @ 8 per cent of the gross receipts itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts.*

*The stand of the assessee before CIT(A) and the Tribunal that the said amount of Rs. 14,95,300 was on account of business receipts had been accepted. Learned counsel for the appellant with reference to any material on record, could not show that the cash deposits amounting to Rs. 14,95,300 were unexplained or undisclosed income of the assessee."*

7.3 It was submitted that the said decision has since been followed by the Coordinate Jaipur Benches in case of Shri Virender Kumar Vs. ITO in ITA No. 1100/JP/2019 wherein it was held that where the source of cash and other deposits in the bank account is out of the assessee's Dairy business and gross receipt thereof have already been offered in the return of income filed under section 44AD of the Act, there is no basis for making the addition in respect of cash deposits. It was accordingly submitted that the assessee be granted the necessary relief and appeal of the assessee be allowed.

8. Per contra, the Ld. DR has relied on the order of the lower authorities. Further reliance was placed on the decision of Hon'ble Himachal Pradesh High Court in case of PCIT Vs. J.M.J Essential Oil Company [2023] 148 taxmann.com 447 (HP).

9. We have heard the rival contentions and perused the material available on record. In case of Surinder Pal Anand (*supra*), the Hon'ble Punjab and Haryana High Court has held that where under special provision of Section 44AD, exemption from maintaining of books of account has been provided and presumptive tax @ 8 per cent of the gross receipts itself is the basis for determining the taxable income, the assessee was not under obligation to explain individual entry of cash deposit in the bank unless such entry had no nexus with the gross receipts.

10. In the instant case, the assessee holds the drug licence for wholesale and retail sale of veterinary medicines and has filed his return of income declaring gross receipts of Rs 72,01,093/- u/s 44AD of the Act. The return of income so filed by the assessee has been accepted by the AO meaning thereby that both the

applicability of section 44AD and non-maintenance of books of accounts as well as particulars in the return of income so filed has been accepted which includes the gross receipts from sale of medicines amounting to Rs 72,01,093/-. At the same time, only thing which has to be satisfied by the assessee is that cash so deposited in the bank account has the necessary nexus with the sales and gross receipts so disclosed by the assessee.

11. In this regard, we find that the assessee has shown cash sales of Rs 18,50,659/- in the month of October 2016 and cash sales of Rs 19,46,845/- in the month of November 2016 and cash of Rs 33,00,000/- has been deposited in the month of November 2016 and the fact that the source of cash so deposited is out of the sales made has been duly reported by the assessee to the Revenue authorities as mandated in terms of filings relating to acceptance of SBN Notes during the demonization period and thereafter, during the course of assessment proceedings, the assessee has also filed sales vouchers of cash sales along with copy of cash book for necessary verification of the Assessing officer. The fact that the cash receipts for the month of October have been deposited in the very next month in November cannot be a reason to dispute rather it supports the case of the assessee by satisfying the proximity test and the nexus which the assessee has established between the sales and the deposits, This coupled with the fact that there was epidemic regarding FMD disease and winter season resulting in increase sales in these two months has not been totally discarded by the AO and the Id CIT(A) and the fact that the sales have been duly reported and forms part of VAT filing and VAT assessment shows that sales cannot be disputed. The decision in case of J.M.J Essential Oil Company (supra) doesn't support the case of the Revenue as in that case, there were cash sales only in a particular month and there was sufficient material on record to show cash sales were fabricated unlike the present case, where the assessee is regularly undertaking cash sales and there are no material on record to establish the

sales so reported are fabricated except suspicion due to high sales vis-à-vis other months and which cannot be a ground to dispute the sales, rather, in the instant case, the assessee has produced the necessary sale vouchers and cash book. We therefore find that the assessee has made the necessary and timely disclosure regarding the source of cash deposited in the SBN notes during the demonetization period and the nexus has been duly established between the sales and cash deposits and in view of the same, we find that there is no justifiable basis to make addition of Rs 23 lacs which already stand disclosed and reported as part of gross receipts u/s 44AD and accepted by the AO resulting in double addition which clearly can't be sustained in the eyes of law. In the result, the addition so made is hereby directed to be deleted.

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

Order pronounced in the open Court on 03/07/2024.

Sd/-

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

Sd/-

विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT 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 अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar