

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 1086/Mum/2024 (A.Y.2017-18)**

**ACIT, Circle-6 (1) (1)**

Room No. 504, 5<sup>th</sup> floor,  
Aayakar Bhavan, M. K. Road,  
Mumbai- 400 020

..... Appellant

Vs.

**M/s. Cenzer Industries Ltd.**

Cenzer House, Ground Floor,  
Parmanandwadi G.D. Ambedkar Marg,  
Parel, Mumbai-400 012  
PAN: AABCC4342F

..... Respondent

Appellant by : Shri H. M. Bhatt, Ld. DR  
Respondent by : Shri Neelkanth Khandelwal, Ld. AR  
Date of hearing : 10/06/2024  
Date of pronouncement : 03/07/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal filed by the revenue is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 12.01.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2017-18. The revenue has raised the following grounds of appeal:-

1. *Whether on the facts and in circumstances of the case and in law the Ld. CIT (A) erred in directing the AO to delete the addition of Rs. 9,89,21,000/- made u/s. 68 r.w.s 115BBE of the IT Act, 1961 without properly appreciating the facts of that case?*
  2. *Whether on the facts and in circumstances of the case and in law the Ld. CIT (A) erred in holding the since the AO has accepted the book result shown by the assessee company and not rejected the same, the addition made by the AO of Rs. 9, 89, 21,000/- on account of cash deposit made during the demonetization period was not legally correct?*
  3. *Whether on the facts and in circumstances of the case and in law the Ld CIT(A) erred in holding that the AO in the course of assessment proceeding failed to brought any cogent & corroborative evidences to support his Stand that assessee company has introduce their unaccounted cash in the grab of cash sales, without appreciating the facts that AO in the assessment order has clearly established that apart from cash sales of Rs 9,89,21,000/-, the assessee company in the current F.Y. i.e 2016-17 & previous F.Y. i.e. 2015-16 and subsequent F.Y. i.e. 2017-18, has not made any cash sales?*
  4. *Whether on the facts and in circumstances of the case and in law the Ld.CIT(A) erred in holding that AO has not brought on record any supporting documentary evidences to justify that cash deposits made by the assessee company did not represents sales but the undisclosed income of the assessee without properly appreciating the facts of the case.*
  5. *The Appellant prays that the order of the Ld. CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored.*
  6. *the appellant craves leave to amend, or alter any grounds or add a new grounds, which may be necessary*
2. The brief facts of the case are that the assessee company filed its return of income on 06.11.2017 u/s. 139(1) of the Act declaring total loss at Rs. (-) 53, 34,687/-. The case of the assessee was selected for scrutiny and appropriate

notices alongwith questionnaire were issued. In response to the same, the assessee filed copy of ITR, audit report alongwith P & L account and balance sheet. The assessee company is engaged in the business of trading of lighting products and calculators. For the year under consideration, the assessee has credited a sum of Rs. 14,01,45,514/- on account of sales and other income of Rs. 35,82,645/-.

3. During demonetization period, the assessee has made huge cash deposits amounting to Rs. 9, 89, 21,000/- in Canara Bank, Goa which was made during period from 11/11/2016 to 13/12/2016. The details of these cash deposits are as under:

Sr. No.	Date	Amount	Bank Name	Account No.
1.	11/11/2016	4,04,03,500/-	Canara Bank	308201004274
2.	12/11/2016	36,500/-	Canara Bank	308201004274
3.	15/11/2019	43,000/-/-	Canara Bank	308201004274
4.	21/11/2016	12,08,000/-	Canara Bank	308201004274
5.	22/11/2016	5,35,000/-	Canara Bank	308201004274
6.	23/11/2016	75,500/-	Canara Bank	308201004274
7.	25/11/2016	4,97,000/-	Canara Bank	308201004274
8.	28/11/2016	1,33,30,000/-	Canara Bank	308201004274
9.	30/11/2019	10,00,000/-	Canara Bank	308201004274
10	07/12/2016	60,00,000/-	Canara Bank	308201004274
11.	08/12/2016	2,00,000/-	Canara Bank	308201004274
12.	09/12/2016	1,69,94,000/-	Canara Bank	308201004274
13.	12/12/2016	20,98,500/-	Canara Bank	308201004274
14.	13/12/2016	1,65,00,000/-	Canara Bank	308201004274
<i>Total</i>		9,89,21,000/-		

4. In addition to the above chart following charts were also furnished by the assessee during the assessment proceedings as desired by the AO:-

**(III). Cash Balance as on 31/03/2015, 08/11/2015, 31/03/2016 & 08/11/2016:**

Cash book balance as on	Amount (Rs.)
31/03/2015	4,02,779/-
08/11/2015	43,67,644/-
31/03/2016	6,89,572/-
08/11/2016	9,93,15,216/-

**(IV). Month wise cash sales and Credit Sales:**

Month	F.Y. 2015-16		F.Y. 2016-17		F.Y. 2017-18	
	Credit excluding taxes	Cash excluding taxes	Credit Excluding Taxes	Cash Excluding taxes	Credit Excluding Taxes	Cash Excluding taxes
April	56,86,152/-	8,95,010/-	36,83,709/-		62,59,564/-	
May	7,52,511/-	1,99,421/-	13,08,900/-		22,32,842/-	
June	23,76,267/-	33,240/-	45,07,597/-		82,41,873/-	
July	23,11,859/-	40,72,989/-	20,11,050/-		32,57,370/-	
August	26,87,594/-	28,95,742/-	23,68,237/-		1,33,26,960/-	
September	88,05,828/-	13,812/-	78,50,496/-		1,82,30,215/-	
October	95,54,711/-		65,49,075/-	9,39,68,872/-	59,43,110/-	
November	31,44,371/-		23,04,378/-		77,62,385/-	
December	34,40,564/-		27,41,826/-		1,01,40,116/-	2,430/-
January	59,12,938/-	3,15,320/-	45,86,803/-		89,47,725/-	
February	37,43,875/-		45,25,936/-		1,31,57,589/-	2,250/-
March	17,02,565/-		37,38,636/-		1,62,85,562/-	24,448/-
<b>Total</b>	<b>6,55,19,234/-</b>	<b>84,25,533/-</b>	<b>46176642/-</b>	<b>9,39,68,872/-</b>	<b>113785311/-</b>	<b>29,128/-</b>

**(V). Cash Sales:**

1	(a). Total Cash Sales in F.Y. 2015-16	88,39,873/-
	(b). Total Cash sales from 01/04/2015 to 08/11/2015	85,08,762/-
2	(a). Total Cash Sales in F.Y. 2016-17	9,89,21,000/-
	(b). Total cash sales from 01/04/2016 to 08/11/2016	9,89,21,000/-

5. The AO observed a huge variation in the figures of cash sales during the previous financial year, next financial year vis-a-vis the year under consideration. This variation he asked the assessee to explain and substantiate. The replies filed by the assessee are on record and duly furnished before the Ld. CIT (A) and before us also. But the AO was not satisfied with the explanations of the assessee and made an addition of Rs. 9, 89, 21,000/-, u/s. 68 of the Act. The assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), who in turn allowed the appeal of the assessee on this issue. Now the revenue is being aggrieved with the order of Ld. CIT (A) preferred the present appeal before us.

6. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith the grounds raised before us. It is observed that the assessee has shown cash in hand as on 31/03/2015 at Rs. 4, 02,779/- and total cash in hand as on 08/11/2015 is at Rs. 43, 67,644/- whereas the assessee has shown cash in hand as on 31/03/2016 at Rs. 6, 89,572/- and cash in hand as on 08/11/2016 is at Rs. 9, 93, 15,216/-. During the year under consideration the assessee made the cash sales out of stock in hand. The case of the assessee was duly assessed for A.Y. 2015-16 and 2016-17, wherein there were no adverse remarks on the books of the assessee and trajectory of purchase, sales and

closing stock were duly accepted. Out of total cash sales of Rs. 9.40 Crores, cash sales of Rs. 6.54 Crores were made out of stock already in hand.

7. The assessee had also filed necessary books of account, including cash book, sales register, and sales bills, purchase details along with bills and stock details to prove that there is no discrepancy in books of account and also the assessee has reported sales made before the date of demonetization to GST authorities. The AO never disputed sales declared by the assessee nor pointed out any discrepancy in purchase or stock in trade held in the business of the assessee before the date of demonetization. In fact, a sale declared by the assessee is backed by corresponding purchases, and is supported by necessary purchase bills. The AO could not point out any discrepancy in stock register maintained by the assessee nor made out a case that the assessee has declared sales without there being any stock in hand. During the assessment proceedings the assessee furnished complete details of customers like name, address, PAN No. and location of customers for more than 5 Lacs.

8. The entire purchase and sales had been duly recorded in the regular books of account of all parties; the transactions were routed through regular banking channels; the purchase and sales were duly supported by quantitative details; copies of bank statements showing sales and purchases were placed before the Assessing Officer, and no incriminating documents concerning sales and purchases were found in the course of assessment proceedings. From the perusal of section 68, the sum found credited in the books of accounts for which the

assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is maintaining the regular stock registers. On every occasion of cash deposit, there was intimation to the department and to verify the facts of sales, purchase and stock, the revenue was very well empowered and informed and could have done spot survey to verify the facts relating to stock, sales and cash deposit etc.

9. The Specified Bank Notes (Cessation of Liabilities) Act, 2017, clearly state that from appointed date 31.12.2016, no person can receive/transact or deal with SBNs. In other words, there is no bar under law for accepting demonetized currency up to 31.12.2016. In view of this, if assessee wants then it may have spread the sales between the periods 08.11.2016 to 31.12.2016. There was no bar in the Income Tax Act, the only action could have been if any, from the Reserve Bank of India.

10. The A.O has blown hot and cold by partly rejecting the books of accounts and partly accepted the books of accounts, which is bad-in-law. Then he can't rely on the books of accounts like opening stock, closing stock, purchases, sundry debtors, sundry creditors, GP Ratio and expenses etc., which are based on books of accounts only, have been accepted. In the present case, the revenue has not rejected the books of account of the assessee accepted in VAT. The regular books of account were maintained in the normal course of business in which no flaw, fallacy or deficiency was pointed out by the Assessing Officer. It is well settled law

that once the Assessing Officer accepts the books of account and the entries in the books of account are matched, there is no case for making the addition as unexplained.

11. The lower authorities cannot place reliance on the circumstantial evidence which is only conjectures and surmises and the said approach of the AO is devoid of merit it deserves to be rejected. Further, the income of the assessee has to be computed by the Assessing Officer on the basis of available material on record and it is very important to have a direct evidence to make an addition rather than circumstantial evidence. When the assessee gives any reply or submission or any documents to the Assessing Officer, it is duty of the Assessing Officer to examine the same in the light of the available evidence. In the instant case the Assessing Officer has concluded the findings on the basis of conjectures and surmises. The Assessing Officer has to establish the link between the evidence collected by him and the addition to be made. The entire case has to be dependent on the rule of evidence, the assessee in this case explained the source of bank deposits are from cash sales. The Assessing Officer proceeded to disbelieve the explanation of the assessee on the presumption basis without bringing the corroborative material on record. The Assessing Officer is required to act fairly as reasonable person and not arbitrarily capriciously. The assessment should have been made based on the adequate material and it should stand on its own leg. The Assessing Officer without examining any parties to whom the goods are sold by the assessee, came to conclusion that the sales are not genuine, without even rejecting the books of account which is in our opinion is erroneous.

12. Moreover, a sale is a subject matter of VAT Department. The Income Tax Department is empowered to verify the transaction from income point of view. Another department of the Govt., i.e. VAT department had already accepted the position of sales and purchases declared by the assessee, hence simply on circumstantial evidence will be taken as conjectures and surmises only. Once the assessee declared the sum of cash received as sales, the revenue department has two options either to verify the same by conducting spot survey to establish its concerns or to reject the books of accounts and apply G.P. Rate on the transactions. Here in this case neither survey proceedings were carried out nor the books of accounts were rejected, in that case the action of the AO will be taken as based on conjectures and surmises.

13. Based on the above, we observed that the assessee produced all the relevant material before the AO at the time of assessment proceedings and the AO was duty bound and empowered too for verification through spot survey or by assigning reasons to reject the books of accounts to strengthen his stand for applying either section 68 of the Act or estimating the profit u/s. 145(3) of the Act. But he failed to do so; in that case we do not see any reason to interfere in the order of the Ld. CIT (A), **hence the same is confirmed and grounds raised by the revenue are dismissed.**

**14. In the result, appeal of the revenue is dismissed.**

Order pronounced in the open court on 3<sup>rd</sup> day of July, 2024.

Sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 03/07/2024

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

*Dhananjay, Sr. PS*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**