

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

आयकर अपील सं/ITA No.362/Ahd/2024  
निर्धारण वर्ष /Assessment Year : 2017-18

The Income Tax Officer Ward-3(1)(1) Ahmedabad	<b>बनाम/ v/s.</b>	Gulamnabi Nuramahmadbhai Momin Plot No.524A Opp.Adarsh Hospital Nr.Telav Sheala Cross Road At Telav Sanand Ahmedabad 382 110 (Gujarat)
<b>स्थायी लेखा सं./PAN:</b>		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Prakash D. Shah & Shri Saiyam V. Shah, ARs
Revenue by :		Shri Sudhakar Verma, Sr.DR

सुनवाई की तारीख/Date of Hearing : 02/07/2024  
घोषणा की तारीख /Date of Pronouncement: 10/07/2024

**आदेश/ORDER**

**PER SHRI MAKARAND V. MAHADEOKAR, AM:**

This appeal by the Revenue arises against the order of the Ld.Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "the Ld.CIT(A)"] dated 29-12-2023, for the Assessment Year (AY) 2017-18, wherein the Ld.CIT(A) partly allowed the appeal deleting additions made by the Assessing Officer

[hereinafter referred to as "the AO"] in his order passed under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"].

**Facts of the case:**

2. The assessee is a proprietor of Janta Enterprise which is a distributor of Hindustan Coca Cola Pvt. Ltd. The Assessee filed his return of income on 02-11-2017 declaring total income of Rs.1,25,210/-. Thereafter, the case was selected for limited scrutiny for the reason - "Cash Deposit during the year". Accordingly, notices u/s.143(2) and 142(1) of the Act were sent seeking details from the assessee.

2.1. In response to the notice, assessee filed a reply stating that assessee is living in a joint family which is in farming on land owned by his father and other family members. Since family's only source of income was agriculture, family members including assessee were not filing return of income. The assessee started new business in the year under consideration and deposited cash in bank account as capital. Rs.40,00,000/- deposited in bank was out of his personal savings and a gift of Rs.30,00,000/- from his father. He furnished copies of bank book and cash book. It was submitted by the assessee, during the course of assessment proceedings, that cash collected from debtors was deposited in bank account from time to time.

2.2. The Assessee was asked to provide details of names and addresses of such parties from whom cash was received. Assessee was also asked to provide the details of Rs.40,00,000/- deposited in his account on 9.12.2016. Assessee could not file the details within the time limit prescribed by the

AO. Therefore, AO treated the deposit of Rs.40,00,000/- as unexplained cash credit and added u/s.68 of the Act to the total income of the assessee.

2.3. The Assessee also could not explain the receipts from debtors and deposited in bank account as detailed below:

<u>Date</u>	<u>Amount of Deposit in Bank Account</u>
31-01-2017	Rs. 23,90,000/-
15-02-2017	Rs. 49,20,000/-
06-03-2017	Rs. 1,00,99,917/-
<b>Total</b>	<b>Rs. 1,74,09,917/-</b> =====

2.4. Since there was no compliance from the assessee, the AO added the total amount of Rs.1,74,09,917/- as unexplained cash credit to the income of assessee. The AO added these unexplained cash credit u/s.68 as per the provisions of section 115BBE of the Act.

3. Aggrieved by the order of AO, the assessee filed an appeal before the Ld.CIT(A), who confirmed the addition of Rs.40,00,000/- and deleted the addition of Rs.1,74,09,917/-

4. During the course of appellate proceedings, the assessee submitted party-wise details like sales, address and mobile numbers. These details were extracted from the SAP system of Hindustan Coca Cola Beverages Pvt. Ltd. (assessee is a distributor of this company). The Assessee stated that all these parties are registered with the company and KYC from all these parties were obtained before approving them as customer by the company.

4.1. The Assessee submitted the copy of tax Audit report along with audited financial statements for the Financial Year 2016-17 to the Ld.CIT(A) in support of his claim.

4.2. The Assessee also submitted day-wise sales for the period from Jan 2017 to March 2017. Since this was the first year of operations of the assessee, data of previous period was not available for comparison. Therefore, assessee submitted comparative data of subsequent period. It was concluded by the Ld.CIT(A) that the majority realisation of sales is in cash. The Assessee further submitted that no any cash was deposited during the period of 08-01-2016 to 31-12-2016, i.e. demonetisation period. The same was confirmed by the Ld.CIT(A).

4.3. Since the findings of the AO relating to cash deposit of Rs.40,00,000/- was not controverted by the assessee and no explanation was offered, the Ld.CIT(A) confirmed the addition.

5. Aggrieved by the order of CIT(A), the Revenue filed an appeal before us with the following grounds of appeal:

- a. *The Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 1,74,09,917/- on account of Unexplained cash credit u/s 68 of the Act.*
- b. *The appellant craves leave to add, alter and /or to amend all or any the ground before the final hearing of the appeal.*

**On the grounds of appeal:**

6. The Ld.Departmental Representative relied on the order of AO and on the on the hand, the Ld.Counsel for the assessee relied on the order of Ld.CIT(A). The Ld.Counsel for the assessee also stated that the assessee has maintained proper books of accounts and the same are audited under section 44AB of the Act. These books of accounts are not rejected by the AO and the addition was made only because the assessee could not produce the details asked for. Since the assessee has produced all the details before the Ld.CIT(A) and who after satisfying himself has deleted the addition therefore, the appeal should not be entertained.

6.1. The Ld.Counsel relied on the decision of this Bench in case of **Radhika Jewellers in ITA No.201/Ahd/2023, dated 11/06/2024.**

7. We have heard the rival contentions. Upon careful consideration of the submissions, we find that the assessee has maintained proper books of accounts which are audited u/s.44AB of the Act. No discrepancies were found in the cash book, bank book, or audited books of accounts by the AO or by the Ld.CIT(A).

7.1. The assessee provided day-wise sales data for the period from January-2017 to March-2017 and comparative data for subsequent periods to the Ld.CIT(A), establishing a pattern of cash transactions in line with business operations as a distributor.

7.2. We have also noted the facts that the cash deposit in question is part of the sale which is explained by the assessee. The profit element of such sale is already offered for taxation by the assessee. Therefore, the AO's additions were based on presumptions and assumptions without any cogent material evidence.

7.3. Upon hearing the rival contentions and examining the submissions, we conclude that:

1. As the assessee maintained proper and audited books of accounts without any discrepancies found by the AO or CIT(A), the primary contention of the AO regarding unexplained cash credits lacks substantiation.
2. The assessee provided detailed justifications for the cash deposits, including party-wise details and verification from the principal company's SAP system, which were accepted by CIT(A).
3. Reliance on the decision of this bench in the case of Radhika Jewellers (ITA No. 201/Ahd/2023) further supports the assessee's position that the AO's additions were based on presumptions and without adequate material evidence.

7.4. The deletion of the addition of Rs.1,74,09,917/- by the Ld.CIT(A) is justified as the assessee has demonstrated that the cash deposits were part of regular business transactions and were supported by adequate documentation.

7.5. In light of the above findings and judicial pronouncements, it is concluded that the order of the Ld.CIT(A) deleting the addition of

Rs.1,74,09,917/- is upheld. Accordingly, the appeal filed by the Revenue is dismissed.

8. In the result, the appeal of the Revenue stands dismissed.

**Order pronounced in the Open Court on 10<sup>th</sup> July, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 10/07/2024

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A) - (NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad