

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.349/Ind/2023
(Assessment Year: 2017-18)

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| ACIT 1(1) Bhopal | vs. | Akash Talreja LG-31 Samvet Shikhar, Building, Opposite BJP Office Rajbandha Maidan, Raipur |
| (Appellant / Revenue) | | (Respondent/ Assessee) |
| PAN: AEDPT3849K | | |

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| Revenue by | Shri Ashish Porwal, Sr. DR |
| Assessee by | Shri Hitesh Chimnani & Yash Kukreja, ARs |
| Date of Hearing | 04.07.2024 |
| Date of Pronouncement | 16.07.2024 |

ORDER

Per Vijay Pal Rao, JM :

This appeal by the revenue is directed against the order dated 21.07.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) Delhi for A.Y.2017-18. The revenue has raised following grounds of appeal:

“1. In the facts, circumstances and provisions of law the addition of Rs. 1,75,00,000/-as unexplained cash which is not justified and lawful.

2. *In the facts, circumstances and provisions of law the appellant of section 115BBE is not justified.*
3. *In the facts, circumstances and provisions of law the application of section 15BBE as per tax rate applicable w.e.f 01.04.2017, on the transaction up to 31.03.2017 is not justified and lawful.*
4. *In the facts, circumstances and provisions of law the surcharge computed Rs. 2,65,320/- on total income excluding income u/s 115BBE, when tax on total income excluding income u/s 115BBE is less than Rs. 1 Crore, is not justified.*
5. *In the facts, circumstances and provisions of law the interest u/s 234B is computed wrongly.*
6. *In the facts, circumstances and provisions of law the initiation of penalty proceedings 271AAC(1) is not justified.*
7. *The appellant prays to allow to add, amend or alter grounds of appeal at the time of hearing.”*

2. The assessee is an individual and filed his return of income for the year under consideration on 30.11.2017 declaring total income of Rs.64,79,340/-. The case was selected for scrutiny through CASS on the issue of huge amount of cash deposit in the bank account during the demonetization period. The AO accordingly issued a show cause notice to the assessee u/s 142(1) to explain the source of cash deposit during the demonetization period. In reply the assessee submitted copies of bank deposits slips and explained that cash of Rs.2,06,07,000/- was deposited in specialized bank notes/ demonetized bank notes of Rs.500 & Rs.1000. The AO noted that the assessee has shown cash deposit during the period 01.11.2016 to 08.11.2017 of Rs.73,20,000/- as against the sales during the period of Rs.2,23,22,224/-. Further the assessee has shown very high sales in first 8 days of November 2016 to cover huge deposit in the bank account in the month of November 2016. Accordingly the

AO considered a sum of Rs.1,75,00,000/- as unexplained cash deposit in the bank account and made the addition of the said amount u/s 69A of the Act. The assessee challenged the action of the AO before the CIT(A) and reiterated the contention that the source of cash deposit is the sales made by the assessee during the preceding months as well as in the month of November which is reflected in the books of account of the assessee showing cash balance in the cash book of the assessee. The CIT(A) accepted the explanation of the assessee and deleted the addition made by the AO. Aggrieved by the impugned order of the CIT(A) the revenue has filed the present appeal.

3. Before the tribunal ld. DR has submitted that the assessee has shown a cash balance in hand of Rs.2,31,61,936/- as on 08.11.2016 which is claimed as the sales made by the assessee from 01.11.2016 to 08.11.2016 whereas the assessee has made total deposit of Rs.73,20,000/- in the bank account from 01.11.2016 to 08.11.2016 as against the claim of cash sales during the said period of Rs.2,23,22,224/-. The assessee has not explained with cogent reason as to why the cash sales of Rs.2,23,22,224/- made from 01.11.2016 to 08.11.2016 was not deposited in the bank account till the 08.11.2016. The AO further noted from the cash book that the assessee deposited cash in the bank account on 08.11.2016 to the tune of Rs.10,30,000/- and on 07.11.2016 of Rs.17,00,000/- but there is no explanation as to why the balance cash in hand was not deposited in the bank account on or before 08.11.2016. Further the assessee has claimed very high sales in the

first 8 days of November as compared to the earlier month without being any exceptional reason or occasion. Ld. DR has submitted that the assessee is a trader and cash sales is otherwise required to be deposited in the bank account for frequent purchase as there is very thin margin in the said business as claimed by the assessee. Therefore, the sudden increase in the sale from 01.11.2016 to 08.11.2016 shown by the assessee is not genuine and real sales of the assessee but the assessee is covering the unaccounted/unexplained income of the assessee which was deposited in the bank account during the demonetization period. Ld. DR has submitted that the AO has relied upon the judgment of Hon'ble Supreme court in case of Sumati Dayal vs. Commissionr of Income Tax 214 ITR 801. Thus the sales claimed by the assessee may be apparent but not real. He has submitted that when the assessee has been depositing cash in the bank account almost every single day then showing huge cash on 08.11.2016 is highly improbable. He has relied upon the order of the AO.

4. On the other hand, Ld. AR has submitted that the assessee is in wholesale trading of Pan Masala and entire sales and purchases are duly recorded in the books of account which are duly audited as per section 44AB of the Act. He has further submitted that the AO has doubted cash balance of Rs.2,31,61,936/- as on 08.11.2016 however, the assessee in support of the said availability of the cash in hands submitted detailed reply and supporting evidence along with books of account. The cash was generated from sales during the normal course of business and the assessee has already offered

the income from said sales to tax. Thus, the addition made by the AO on account of cash deposit in the bank account amounts to double taxation. The addition made by the AO is erroneous and purely on the basis of conjecture and surmises as the AO has simply doubted the availability of the cash in hand as on 08.11.2016 which is a complete disregard to the audited financial statement of the assessee supporting the availability of the cash. Ld. AR has further submitted that the sale of the assessee is not disputed by the commercial tax department as VAT return filed by the assessee corroborates the claim of the assessee. Ld. AR has further submitted that the transactions are duly recorded in the books of account and therefore, it is outside purview of section 69A of the Income Tax Act. The assessee clearly explained source of cash transactions from sales during the normal course of business and also paid indirect tax (VAT) on the same. The AO has not brought any material on record to refute the claim of the assessee or doubt correctness of the claim. The additions made by the AO are purely based on conjecture and surmises which was rightly deleted by the CIT(A). He has referred to the cash flow statement, bank account statement and details of unsecured loans with ledgers. Ld. AR has referred to the trading and profit & loss account and submitted that during the year under consideration the assessee was having turnover of Rs.37.21 crore and therefore, the sales shown by the assessee in the month of November 2016 is not abnormal keeping in view of the overall turnover of the assessee during the year. He has further contended that when the books of

account of the assessee are not rejected and correctness of the same is not doubted then the availability of the cash in hand as on 08.11.2016 cannot be denied which is the source of deposit made in the bank account of Rs.2,06,07,000/- in specified bank notes. He has relied upon the impugned order of the CIT(A).

5. We have considered rival submissions as well as relevant material on record. The AO in the show cause notice has pointed out that the assessee has deposited a sum of Rs.7,65,40,000/- during the demonetization period. In reply to the said show cause notice the assessee clarified that out of the said deposit the cash of Rs.2,06,07,000/- was deposited in the specified bank notes. The AO has proceeded to restrict the issue only by considering the deposit made by the assessee during the demonetization period in specified bank notes. The assessee has claimed the source of deposit made in the bank account as sales from 01.11.2016 to 08.11.2016 and availability of the cash in hands of Rs. Rs.2,31,61,936/- as on 08.11.2016. It is pertinent to note that the assessee has shown cash in hand as on 01.11.2016 at Rs.84,01,347/- as reflected in the month wise cash sales and cash deposit placed at page no.71 of the paper book as under:

SHRI BALAJI MARKETING
SAMVET SHIKHAR RAJBANDHA MAIDAN RAIPUR
4 Month wise cash sales and cash deposit from 01.04.2016 to 08.11.2016

| Month | Op.cash in | Cash | Cash | Cash | Closing |
|--------------------------|------------|-------------|--------------|-----------|-------------|
| Wise | hand | Sales | Deposit Bank | Withdrwal | Cash Hand |
| APRIL,16 | 3846996.48 | 8881464.18 | 7616482 | 0 | 4944924.64 |
| MAY, 16 | 4944924.64 | 38491491.51 | 41367750 | 0 | 1903398.15 |
| JUNE,16 | 1503398 | 41626686.9 | 41587580 | 0 | 1923867.05 |
| JULY,16 | 1923867.05 | 3401318.17 | 4689500 | 0 | 319597.22 |
| AUG,16 | 319597.22 | 6071076.75 | 5173100 | 9337 | 1196251.26 |
| SEP,16 | 1196251.26 | 9707013.16 | 10751000 | 9315.06 | 40740.48 |
| OCT,16 | 40740.48 | 34082623.54 | 25333700 | 9622.69 | 8401347.71 |
| 1 NOV.to 08.11 till Date | 8401347.71 | 22322241.75 | 7320000 | 1190 | 23161936.46 |
| TOTAL AMOUNT | | 164583915.9 | 143839112 | 29464.75 | |

gts

6. Therefore, the claim of availability of the cash in hands as on 08.11.2016 at Rs.2,31,61,936/- is very abnormal in comparison to the month wise sales and cash deposit in the bank account. The assessee has claimed that the cash was generated from the sales made from 01.11.2016 to 08.11.2016 of Rs.2,23,22,224/- which is also absolutely abnormal in comparison to the sales for the remaining period of the year and that too when no specific occasion or cause was either in-existence or explained by the assessee for such a spurt in the sales. Therefore, the claim of the assessee of such abnormal sales of Rs.2.23 crore during the short span of period from 01.11.2016 to 08.11.2016 is beyond a reasonable acceptable claim triggering the proper scrutiny of the same by the AO. Thus, the claim of the assessee can be verified and ascertained conclusively only by considering the availability of the stock with

the assessee for making such sales from 01.11.2016 to 08.11.2016. The assessee has not produced the stock register to show the physical/quantitative details of availability of the stock for making the sale during the period from 01.11.2016 to 08.11.2016. The matter was fixed for clarification on the point of purchase but the assessee has not produced the quantitative details and particularly the stock register or the bills and voucher to show the availability of the quantity/stock for the sales made during the said period. The CIT(A) has deleted the addition made by the AO by accepting contention of the assessee without verifying factual details of stock available with the assessee for making such sales from 01.11.2016 to 08.11.2016 to the tune of Rs.2,23,22,224/-. It is pertinent to note that as per details of deposit made in the bank account the assessee has been regularly depositing the cash in the bank account for making purchases and therefore, the accumulation of the cash in hand and subsequent deposit during the demonetization period is also not normal conduct on the part of the assessee as no plausible reason was explained by the assessee for such accumulation of cash till the demonetization was declared. The assessee has shown the entire sales in cash and claimed that the purchases were made on credit and payments were subsequently made through banking channel. Even the transactions of purchase are also with the related parties which require a deeper scrutiny to ascertain the availability of the stock with the assessee for the alleged sale made from 01.11.2016 to 08.11.2016. Accordingly in the facts and circumstances of the case

we are of the considered view that the matter requires a proper verification and examination of the relevant facts regarding the availability of stock for making alleged sales from 01.11.2016 to 08.11.2016. Hence, the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the AO for fresh adjudication in the light of the above observation. Needless to say the assessee be given an appropriate opportunity of hearing before passing fresh order.

7. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 16.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 16 .07.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*