



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.353/LKW/2020
Assessment Year: 2017-18

Yash Ornaments (P) Ltd. LG, 2/35C, Krishna Janki Complex, Civil Lines Bareilly	v.	The ACIT Circle-2 Bareilly
PAN:AAACY3311K		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.		
Respondent by:	Shri Yogendra Kumar Mishra, D.R.		
Date of hearing:	04	07	2024
Date of pronouncement:	23	07	2024

ORDER

PER SUBHASH MALGURIA, J.M.:

This appeal has been filed by the assessee against the order of the ld. CIT(A), Bareilly dated 30.12.2019 for the assessment year 2017-18.

2. The brief facts of the case are that the assessee, carrying on Sarrafa business, e-filed its return of income for the year under consideration on 19.9.2017, showing total income of Rs.56,04,230/-, which was processed under section 143(1) of the Act by the CPC, Bangalore. Thereafter, the case of the assessee was selected for scrutiny through CASS on the basis that a total sum of Rs.84,00,000/- were found to have been deposited in the bank accounts of the assessee during the demonetization period. The Assessing Officer completed the assessment under section 143(3) of the Act on a total income of Rs.1,19,47,230/- by making an addition of Rs.63,43,000/- under section 68 of the

Act, treating the cash deposit in the bank account of the assessee as undisclosed income of the assessee.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A), who, relying on various case laws and after considering the detailed submissions of the Id. counsel for the assessee, deleted the addition of Rs.58,00,000/- and confirmed the addition of Rs.5,43,000/- out of the total addition of Rs.63,43,000/- made by the Assessing Officer. Aggrieved, the assessee is in appeal before us, raising the following grounds of appeal:

1. *The Learned Commissioner of Income (Appeals), Bareilly (here-in-after referred to as the Ld. CIT (A)'s) grossly erred on facts and in law in conforming the addition to the extent of Rs.5,43,000/- being cash deposited during the period of demonetization without any basis only on estimated basis without any reasoning as to why this amount is being confirmed and thus the addition so confirmed only on notions, conjectures and surmises may kindly be ordered to be deleted.*
2. *While conforming the addition of Rs.5,43,000/- the Ld. CIT (A)'s grossly erred on facts and in law in holding that there was an abrupt jump in sales during the months of October and November without any cogent explanation, whereas in fact the reason for the jump in sales was duly explained and further that these sales are duly recorded and profit has already been disclosed which has been accepted by the AO and thus the addition has been confirmed only on assumed basis which is not sustainable on the facts and may be ordered to be deleted.*
3. *The addition so confirmed further suffers from an illegality wherein the AO has not found any defect in the books of the appellant Co. only on preponderance of probability and in not appreciating that the sales for the year have increased substantially from 5.61 crore to 9.76 crore*

which has not been taken into consideration and thus the addition so confirmed wholly on notions, conjectures and surmises being devoid of any merit may kindly be ordered to be deleted.

- 4. That the Ld. CIT (A)'s further grossly erred on facts and in law in conforming the addition u/s 69A instead of that made u/s 68 by the AO by applying the provisions of sec. 292 B of the Act whereas in fact it is neither a mistake, defect or omission by the AO but a conscious decision to apply the provisions of sec. 68 of the Act and thus the action of the Ld. CIT (A)s to suo motu change the section is invalid in law and thus the addition so sustained be ordered to be deleted.*
- 5. That the Ld. CIT (A)'s further grossly erred in law in conforming the addition by applying the provisions of Section 69A of the Act without appreciating that provisions of above Section are not applicable in a case where the Appellant has deposited the cash in the bank account since provisions of above Section are applicable when an assessee is found to be owner of an asset during the course of search or survey and provisions cannot be invoked in a case where assessee has already declared the cash by way of depositing in the bank account and making necessary entries in the books of account regularly maintained by it.*
- 6. That the Ld. CIT (A)'s further erred in conforming the addition on account of cash deposited in the bank which was represented by cash balance as per books without appreciating that amount under reference has already been considered as income by the Appellant in the year under reference or in earlier years and, therefore, addition made in this respect has resulted in double addition which cannot be made as per settled legal position.*
- 7. That the Ld. CIT (A)'s erred in rejecting the ground relating to applicability of provisions of Section 115BBE of the Act on the facts and circumstances of the case for determining the tax-liability as per the aforesaid Section without appreciating that provisions of Section 69A were not*

applicable in the facts of the case and, therefore, provisions of Section 115BBE of the Act could not be invoked.

8. *That the Ld. CIT (A)'s erred in rejecting the ground relating to applicability of provisions of Section 115BBE of the I.T. Act as substituted by the Taxation Laws (Second Amendment) Act 2016 which was passed on 15-12-2016 as such cannot be applied on the transactions which took place prior to the coming into existence of these provisions.*

4. At the time of hearing before us, the ld. counsel for the assessee submitted that the ld. CIT(A) erred in sustaining the addition of Rs.5,43,000/- on ad hoc basis. The ld. counsel for the assessee further submitted that the ld. CIT(A) has not passed a speaking order why the aforesaid addition has been sustained. He contended that the aforesaid addition of Rs.63,43,000/- made by the Assessing Officer was arbitrary and unjustified in specific facts and circumstances of the case as appreciated by the ld. CIT(A) in deleting the addition of Rs.58,00,000/-.

5. On the other hand, the ld. D.R. has contended that the cash sales made by the assessee had substantially increased during the demonetization period and the assessee failed to fully explain and substantiate the credits in the Bank accounts of the assessee during the relevant period. However, the ld. CIT(A) has given substantial relief to the assessee, therefore, no interference is called for in his order.

6. We have heard both the parties and perused the material on record. On perusal of the impugned appellate order of the ld. CIT(A), we find that the assertions made by the ld. counsel for the assessee are correct. We are of the view that the ld. CIT(A) has not passed a speaking order why the aforesaid addition of Rs.5,43,000/- has been sustained. Therefore, in the

specific facts and circumstances of the present case, we direct the Assessing Officer to delete the aforesaid amount of Rs.5,43,000/-, the addition of which was sustained by the ld. CIT(A) on ad hoc basis without passing a speaking order.

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

Order pronounced in the open Court on 23/07/2024.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

DATED:23/07/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order
Assistant Registrar