

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

**ITA No.767/M/2024
Assessment Year: 2017-18**

Ekta Suresh Khosla Gala No. 1, Thosar Building, Mahavir Chowk, Near S. T. Stand, Alibag- 402201. PAN: AYVPK6418M	Vs.	Income Tax Officer- 34(1)(5) Kautilya Bhavan, Bandra Kurla Complex, Bandra (E.)- 400051.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Hari Raheja, A.R.
Revenue by : Shri P. D. Chougule, (Addl, CIT), SR. D.R.

Date of Hearing : 12 .06 . 2024
Date of Pronouncement : 27. 06 . 2024

ORDER

Per: Ratnesh Nandan Sahay, Accountant Member:

1. The appellant has filed this appeal against the order of the Ld. CIT (Appeals), passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059134774(1) Dated 28/12/2023 for the Assessment Year 2017-18.

2. The following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case the Ld. Commissioner of Income Tax(Appeal) erred in confirming the addition made by the Assessing Officer, which was on the ground other than the reasons recorded in the notice issued u/s.143(2) under CASS without converting the same as full scrutiny and thereby no followed the instructions for completion of the assessment under CASS on the ground or grounds as stated in the appellate or deror otherwise.*
2. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax(Appeal) erred in not finding out whether the Assessing Officer has obtained necessary permission from appropriate authority for converting the case into full scrutiny without appreciating the fact that objections were raised for the same in the appeal proceedings and the same have not been disposed off before deciding the case on the ground or grounds as stated in the appellate order or otherwise.*
3. *On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeal) erred in confirming the an estimated addition of Rs.23,02,000/- u/s.69A by estimating undisclosed sales at the rate of 1 percent of the total sales without bringing any evidences for the same on record and inspite of the fact that no show cause notice for the same was issued at the time of assessment before making the addition on the ground or grounds as stated in the appellate order or otherwise.*
4. *On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeal) erred in confirming taxing of the addition of undisclosed sales u/s.115BBE without bringing any evidences for the same on record as to how the income is covered under special provisions u/s 115BBE on the ground or grounds as stated in the appellate order or otherwise.*

5. *The Appellant craves leave to add, amend, alter, modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another.*”

3. The facts of the case, in brief, are that the assessee has made cash deposits of Rs.3,28,99,700/- during demonetization period as under:

Standard Chartered Bank	Rs.2,25,000/-
Alibaug Co. Op. Urban Bank Ltd.	Rs.2,94,89,200/-
HDFC Bank Ltd.	Rs.1,94,000/-
Punjab National Bank	Rs.29,91,500/-
<u>Total</u>	<u>Rs.3,28,99,700/-</u>

4. The assessing officer, thus, asked the assessee to explain the source of the cash deposits. In response to that the assessee stated that the cash deposits in the bank account have been made out of ‘cash in hand’ out of cash sales from liquor business which she carried on from 01/09/2014. The assessee, further, stated that the balance sheet of the liquor business is under preparation and will be furnished in a week’s time along with PAN details of the creditors and their addresses. It was also stated that there are no debtors. The assessee further submitted cash book for the period from 01/04/2016 to 30/11/2016 and also the auditor’s report in Form No. 3CD showing a total turnover for the period under consideration at Rs.23.02 Crores as against a turnover of Rs.20.34 Crores in the last year. As per the auditor’s report the gross profit for current year is Rs.1.13 Crores

compared to Rs.79,75,997/- during the last year and the net profit for current year is Rs.50,22,431/-, whereas, during the last year the profit was at Rs.48,58,018/-. The Assessing officer then estimated the income of the assessee @1% of the total turnover and added a sum of Rs.23,02,000/- as income of the assessee u/s. 69A of the IT Act.

5. Aggrieved by the order of the Assessing officer, the assessee filed appeal before the Ld. CIT(A), who vide its order No. ITBA/NFAC/S/250/2023-24/1059134774(1) dated 28/12/2023 dismissed the appeal of the assessee by holding as under: -

“6.2. It is seen from the assessment order that the appellant was afforded opportunities of hearing on a couple of occasions and the appellant mentioned that all of the sales are in cash and the cash deposits in bank account are mainly out of cash sales from liquor business. Thus, the AO had a reason to observe that some portion of cash would remain with the appellant and fact for the same could be that the sale bill would not have been generated as and when the cash sale took place. In view of this very observation, the AO estimated 1% of turnover as unaccounted sale and made addition. Objecting such addition, the appellant is into present appeal and made submissions that the AO had proceeded beyond his jurisdiction as the scrutiny was a limited scrutiny. The AR has explained that the cash book was submitted before the AO and all the transactions

were explained. However, it is a fact that the case was selected for scrutiny to examine cash deposits during demonetization period. As the cash deposits were emanating from out of the cash sales of liquor business and the appellant is involved in cash sales for the entire financial year 2016-17 relevant to A.Y. 2017-18 as per her own submissions, the AO's action of estimating a small portion, i.e. 1% of turnover as unaccounted sales especially when there are no sales registers/bills verifiable as seen from the records, cannot be considered as incorrect. Further, reasonable opportunities have been granted to the appellant including video conferencing during the appeal proceedings to explain its case. Despite the opportunities, the appellant could not furnish sales and purchase details. Neither supporting details of VAT/GST were furnished in the absence of which it is difficult to prove the nexus between cash sales and cash deposits. In view of the above discussion, the AO cannot be held to have travelled beyond jurisdiction. Considering these facts and circumstances, the addition made by the AO is confirmed. As the addition is made on unaccounted sales, the tax treatment of the same u/s. 115BBE holds good. In view of the above, the grounds 1 to 4 are dismissed. The ground no.5 is premature and the ground no.6 is consequential and thus needs no separate adjudication. The general ground also needs no adjudication.

7. In the result, the appeal is dismissed.”

6. Aggrieved by the order of the Ld. CIT (A), the present appeal has been preferred. During the appellate proceedings before us, the appellant submitted as under :-

“1. The AO has mentioned in the notice that in case the cash deposits are not explained, provisions of section 68 would be invoked. However, the AO considered the reply filed by the Appellant and without granting any opportunity or giving show cause notice made an estimated addition of Rs.23,02,000/- as unrecorded sales u/s 69A of IT Act, 1961.

2. The Appellant submits that she has responded to all the notices and supplied necessary explanations as has been called for by the Assessing Officer during the course of assessment proceedings, which is being faceless assessment. The last notice received by the Appellant was on 15/11/2019 and the same was replied online 27/11/2019. While considering the reply filed, the Assessing Officer without granting any opportunity to explain any doubt or issue while finalizing the assessment, directly assumed and estimated sales and finalised the assessment proceedings.

3. The Appellant submit that the action of the Assessing Officer is totally unjustified and he has failed to grant any opportunity of hearing and the same is totally against the established principal

of natural justice and more particularly against the basic guidelines set for Faceless assessment.

4. *The Appellant, therefore, submits that the action of the Assessing Officer should be held unjustified and the assessment order passed should be quashed as the same is passed without following the due process of law.*

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5. *The Appellant submits liquor business is a regulated business and appellant has to maintain necessary records as per state excise law. Thus, there is no reason for the AO to doubt the same and arrive at any assumption or estimation.”*

7. It was, further, stated that the addition was made on different issue which was not raised in the notice issued u/s.143(2) of the IT Act and thus, the addition made on estimate basis and taxing at higher rate u/s.115BBE of the IT Act was wrong without bringing out any evidence on record as to how the income was covered under special provision u/s.115BBE of the Act. The D.R., on the other hand, placed reliance on the order of the Ld. AO and the Ld. CIT (A).

8. We have considered the facts of the case and the submissions made by the appellant stated as above. It is found that the AO has not provided the assessee the opportunity of being heard before making addition u/s. 69A of the Act. The AO has also not examined the Books of Account

produced before the AO, thus, the matter is restored back to the file of AO for giving opportunity of being heard to the appellant to explain that the cash deposits in the bank are duly reflected in the Books of Accounts of the assessee. The grounds of appeal raised by the appellant, therefore, are allowed.

9. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 27.06.2024.

**Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.06.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.