

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.76/Mum/2024
(Assessment Year :2017-18)**

Shri Premji Thaver Shah 31, 4X4, C/o. Prince Paper Corporation Shastri Nagar Irla Vile Parle (West) Mumbai – 400 056	Vs.	ACIT- Central Circle 5(2), Mumbai
PAN/GIR No.AADPS7856B		
(Appellant)	..	(Respondent)

Assessee by	Shri Vishwas Mehendale
Revenue by	Shri H.M. Bhatt
Date of Hearing	18/06/2024
Date of Pronouncement	29/07/2024

आदेश / O R D E R

PER B.R. BASKARAN (A.M):

The assessee has filed this appeal challenging the order passed by learned CIT (53), Mumbai. The solitary issue urged in this appeal relates to the addition of Rs.1.04 crore pertaining to cash deposited during the demonetization period.

2. The facts relating to the issue are discussed in brief. The assessee is a retailer in sale of fire crackers. The AO noticed that the assessee has deposited cash aggregating to Rs.1.34 crores into his bank account during the demonitisation period commencing from 08-11-2016. The AO also noticed that the assessee has not made such kinds of deposits in the earlier years. Hence the AO asked the assessee to explain the sources of the above said cash deposit. The assessee explained that he has effected cash sales during Diwali period and the cash received on such sales has been deposited into his bank account. The AO noticed that the assessee had deposited cash of Rs.39.91 lakhs only in the immediately preceding year, while the deposit made during the corresponding period of the year under consideration has increased three fold. Accordingly, the AO held that the assessee was not able to explain and substantiate the genuineness of cash sales and the nature/source of cash deposits aggregating to Rs.1.34 crores. Considering the quantum of cash deposit made in the preceding year, the AO accepted the availability of cash balance to the tune of Rs.30.00 lakhs. Accordingly, he assessed the remaining amount of Rs.1.04 crores as unexplained income of the assessee u/s 68 of the Act. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal.

3. The Ld A.R submitted that the assessee has maintained regular books of accounts and the entire cash sales has been duly accounted for in the books of accounts. The impugned deposit of Rs.1.34 crores has been made out of the cash balance available in the books of accounts only. He

submitted that the AO has not rejected the books of accounts and hence he could not have disbelieved the cash balance available with the assessee in the books. He further submitted that there has been increase in cash sales during the diwali period, since license of two other fire cracker dealers located in the very same area was cancelled. He submitted that the fire crackers were sold across the counter during the diwali period and hence the sales bills were not prepared. However, entire sales have been accounted for in the books of accounts. Further, the availability of sufficient stock with the assessee has not been doubted with. He submitted that the assessee has reported the sales to the VAT authorities and the same has been accepted by them. Since the cash deposits have been made out of the cash balance available in the books of accounts, the Ld A.R contended that the tax authorities are not right in making the impugned addition.

4. The Ld D.R submitted that the assessee claims that the cash was realized during the diwali sales. However, he has not explained as to why the deposits were not made in one go. Hence the explanation of the assessee has been rejected by the tax authorities.

5. In the rejoinder, the Ld A.R submitted that there were huge rush in the banks after announcement of demonitisation and hence the assessee, in order to ensure safety of cash, has deposited in many instalments. Moreover, the banks were also not ready to accept cash beyond certain limits.

6. We heard rival contentions and perused the record. The fact that the assessee is a retail trader in fire crackers has not been disputed. It is the submission of the assessee that he had effected cash sales during the diwali period and the cash realized during that period has been deposited into the bank during demonitisation period. It is the submission of the assessee that all cash sales have been accounted for in the books of accounts and further, the sales turnover recorded in the books has also been duly reported to the VAT authorities. Accordingly, it was submitted that the sales turnover reported by the assessee cannot be doubted with. It was further submitted that the assessee was possessing sufficient cash balance in the books and the impugned deposits have been out of the book balance only. The Ld A.R submitted that the assessee has furnished details of cash sales, credit sales and cash balance before the AO.

7. Thus, it is seen that there is no dispute with regard to the fact that sufficient cash balance was available in the books of accounts and the impugned cash deposits have been made by the assessee out of the said cash balance only. The important factor noticed by us is that the assessing officer has not rejected the books of accounts. When the AO did not reject the books of accounts, we are of the view that the explanation of the assessee with regard to availability of cash in the books could not have been rejected by the assessing officer. Even though the AO has expressed doubts with regard to the claim of increase in cash sales, yet the fact remains that such cash sales have been accounted for in the books of accounts and further the such sales have been duly

reported to VAT authorities. Further, the assessee has also explained the reasons for the increase in the cash sales. Hence, we are of the view that the assessing officer was not right in making the impugned addition of Rs.1.04 crores, when the assessee has made these deposits out of cash balance available in the books of accounts, which would explain the nature and source of deposits in terms of sec.68 of the Act. Accordingly, we are of the view that the Ld CIT(A) was not justified in confirming this addition.

8. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.1.04 crores made by him u/s 68 of the Act.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 29/07/2024 by way of proper mentioning in the notice board.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated 29/07/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai