

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.279/Del/2022
(Assessment Year : 2017-18)

Rajesh Agrawal 34/3128, First Floor, Beadonpura, Saraswati Road Karol Bagh, Delhi – 110 005 PAN No. ACKPA 9838 J (APPELLANT)	Vs.	ITO Ward – 51(1) New Delhi (RESPONDENT)
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Assessee by	Shri Ankur Mittal, Adv. And Shri B. L. Mittal, Adv.
Revenue by	Shri Vivek Vardhan, Sr. D.R.

Date of hearing:	06.05.2024
Date of Pronouncement:	06.08.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order passed by the Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi dated 14.12.2021 arising from the assessment order dated 27.12.2019 passed by the ITO, Ward – 51(1), New Delhi (hereinafter referred to as 'AO') under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2017-18.

2. As per the grounds of appeal, the assessee has challenged the addition of Rs.44,71,907/- sustained by the CIT(A) out of the total addition of Rs.50,53,094/- made by the AO towards unexplained cash deposits under section 69A r.w.s 115BBE of the Act.

3. In the course of hearing, the learned Counsel for the assessee submitted that assessee has been trading in jewellery and bullion. The sale of jewellery and bullion etc. comprises of cash as well as through banking channel. A comparative chart was referred from Assessment Years 2014-15 to 2017-18 in this regard. It was submitted that the average cash sales comes to around 35.75% of the total sale of all the four years. The assessee is covered by 'presumptive taxation scheme' and filed return of income as per provisions of Section 44AD of the Act. No books of accounts are mandatory to be maintained under presumptive taxation except to declare Gross sales, Sundry Creditors and closing stock as on 31.03.2017 which was duly declared in the return of income. The assessee deposited Rs.65,00,000/- during demonetisation of currency of Rs.500/- and Rs.1000/- notes, Rs.35,00,000/- was deposited on 15.11.2016 and Rs.30,00,000/- was deposited on 12.11.2016.

4. The learned Counsel submitted that the source of cash deposit of Rs.65,00,000/- is as under:

Sr. No.	Particulars	Amount
1.	Out of opening cash in hand as on 01.04.2016 of Rs.13,81,187/-	Rs. 12,00,000/-
2.	Out of cash sales of Rs.38,83,771/- (which comprises cash sale of two cars of Rs.1,95,000/- in July, 2016 and	Rs. 36,00,000/-

	Rs.1,90,000/- in Sep, 2016)	
3.	Out of cash withdrawal between 01.04.2016 to 31.10.2016 from bank Rs.17,00,000/- as per bank statement highlighted therein	Rs. 17,00,000/-
	Total	Rs. 65,00,000/-

5. The learned Counsel for the assessee thus assailed the action of the Revenue authorities and submitted that the source of cash deposit is fully explained in these circumstances.

6. The learned DR for the Revenue on the other hand relied upon the First Appellate order and contended that the assessee has presented and unrealistic picture of source of cash deposits.

7. We have carefully considered the rival submissions and perused the material available on record. The controversy revolves around source of cash deposit of Rs.65,00,000/- during demonetization period. The CIT(A) has adjudicated the issue granting partial relief to assessee as under:

“4.3 I have considered the matter. As seen from assessment order, assessee was found to have deposited specified bank notes amounting to Rs.65,00,000/- during the period of demonetization. The assessee had claimed that source of cash deposited was out of:

- 1. Opening Cash in Hand - Rs.13,81,187/-*
- 2. Cash sales - Rs.38,83,771/-*
- 3. Cash withdrawal - Rs.12,00,000/-*

4.3.1 Regarding opening cash balance of Rs.13,81,187/- the assessee has produced purported cash book showing cash balance of Rs.13,81,187/- as on 01.04.2016. The content of cash book was disbelieved by the AO. In this regard assessee relied on VAT returns being filed by him before demonetization was

announced. But I failed to understand how VAT returns can support contention of having cash in hand. The Income Tax return for A.Y.2016-17 was filed much after demonetization. The purported cash book supplied to the AO had no supporting evidences at all. The AO stated that a sum of Rs.7,00,000/- was withdrawn on 31.03.2016. The AO has assumed that other than Rs.7,00,000/-, assessee did not have any cash balance. This assumption also is not probable. It would not be fair to assume that assessee was without a single rupee of cash in hand except the withdrawal of Rs.7,00,000/-Appellant claimed that out of cash deposit of Rs.65,00,000/- a sum of Rs.12,00,000/- was from opening cash. In my considered view, it will be reasonable to restrict addition on account of opening to the Rs. (12,00,000-7,00,000) or Rs.5,00,000/- The remaining sum of Rs.1,81,187/- is treated as cash balance over and above the withdrawal of Rs.7,00,000/-.

4.3.2. The AO had rejected the claim of assessee that a sum of Rs.17,00,000/- was out of cash withdrawn on various dates. From records available, it is seen that the cash withdrawal took place as under.

<i>Date</i>	<i>Amount</i>
<i>24.06.2016</i>	<i>4,00,000/-</i>
<i>27.06.2016</i>	<i>4,00,000/-</i>
<i>29.09.2016</i>	<i>5,00,000/-</i>
<i>07.10.2016</i>	<i>4,00,000/-</i>

In the assessment order, the AO stated that entire amount of Rs. 12,00,000/- is treated as unexplained. The AO pointed out the fact that assessee was paying interest to bank while at the same time claiming to keep substantial amount of cash in hand. In my view, the explanation regarding keeping so much of cash in hand for pretty long time is not convincing. However, the withdrawals on 29.9.2016 and 7.10.2016 are not too far apart from the date when demonetization was announced. In my considered view, assessee can be given the benefit of withdrawals that took place on 29.9.2016 and 7.10.2016. Hence, addition is restricted to Rs.8 lakh.

4.3.3 Regarding cash deposited out of purported cash sales, the assessee has presented a totally unrealistic picture of cash sales during the year. The AO had demonstrated in the assessment order how the cash sales were inflated. The cash sale shown was totally out of proportion as compared to immediate preceding

years as well as the month preceding October, 2016. There was cash sale of Rs.3,85,000/- from 01.04.2016 to 30.09.2016. The alleged cash sale figure jumped to Rs.34,98,771/- for the period 1.10.2016 to 8.11.2016. The figure presented by assessee appeared to be more in the nature of make-belief-statement. It is also strange that almost all the purported case sales preceding the period, of demonetization was still available for deposit during period of demonetization as if the assessee was not required to make any payment for purchases. Payments to the two parties were purportedly made only on 16.11.2016 and 22.11.2016. In this regard, alleged claim of payment to two parties out of cash deposited by assessee was found to be unproved by the AO. The alleged parties did not comply with notice issued u/s 133(6). The AO also has noted serious discrepancies in the confirmations allegedly furnished by the suppliers of assessee. One of the alleged parties viz. Vanachal Vyapar Pvt. Ltd. was allegedly in business of steel and not in jeweler business. It was not available at the given address. In view of the above, I have no reason to interfere with the decision of the AO on the issue of addition of cash deposit from purported cash sales.

In the result, assessee gets relief of Rs.(1,81,187 & 4,00,000/-) or Rs.5,81,187/-

Appeal is partly allowed.”

8. On perusal of facts on record, it is observed that the assessee has declared opening cash in hand on 01.04.2016 at Rs.13,81,187/-. In the absence of documentary evidences, the AO treated Rs. 6,81,187/- to be unexplained out of such opening cash in hand. The CIT(A) substituted the opening cash in hand at Rs.8,81,187/-. The assessee on the other hand, seeks to assert that Rs.12,00,000/- have been sourced out of opening cash in hand. In the light of factual matrix made available and withdrawals in the earlier year the view taken by the CIT(A) cannot be wholly discarded. The CIT(A) has based its finding on nuanced analysis of pattern of withdrawals in earlier year.

9. The AO has further rejected the claim of the assessee that a sum of Rs.17,00,000/- to be out of aggregate cash withdrawals in the month of June,

September and October, 2016. The CIT(A) partially accepted the explanation of deposits out of September, October withdrawals but however, declined to admit the source of deposits of Rs.8,00,000/- out of June, 2016 withdrawal owing to length of time of holding large amounts and possible utilization thereof for business and other needs. The CIT(A) also analyzed the plea towards cash deposit to be out of cash sales during the year but held that such explanation towards source is make belief explanation on the ground that cash sales for the whole year will not be piled up but would be utilized for purchase and other requirements. The CIT(A), thus did not accept the explanation of the assessee to be convincing and based on appraisal of facts, granted partial relief of Rs.5,81,187/- out of total addition of Rs.50,53,094/-.

10. It is common knowledge that dependence on cash in Indian economy is in existence although not necessarily desirable. The cash transactions wraps the cloak of anonymity and is without any audit trail. The Revenue thus has to depend, at times, on gauging possibilities and probabilities in the absence of any clinching evidence. The assessee in the instant case, has sought to explain the source of deposits, out of large cash in hand out of aggregate cash sales prior to demonetization, out of cash withdrawals between 01.04.2016 to 31.10.2016 etc. The explanation appears almost unrealistic and freak. It is unbelievable that the assessee would keep large cash in hand and continue to keep the cash generated from sales in its custody without any corresponding payments for purchases in the intervening period on deposit in Bank. The explanation offered towards source of cash deposit, when the facts are seen in perspective, do not inspire any confidence. The assessee has done nothing to dispel the perception of the Revenue towards propriety of source of deposits. In the same breath however, it is difficult to assign a particular degree or standard of proof to establish the holding of cash in a conclusive manner with precision. The assessment

towards source of cash deposits involves a process of evaluation of facts which involves guess and estimation. It is difficult to test the reliability of explanation towards cash deposit to the hilt in the circumstances existing in the case.

11. We, thus, in fitness of things, would consider it appropriate to grant some benefit of doubt to the assessee. The possibilities of part of cases deposits out of cash withdrawals in the past and cash sales during the year cannot be wholly ruled out. In the balance of things, we consider it appropriate to grant partial relief to the extent of Rs.25,00,000/- over and above the relief granted by the CIT(A). The First Appellate order is, thus, modified by such further relief over and above relief granted by him.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 06.08.2024

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 06.08.2024

*Priya Yadav, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI