

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.160/Mum/2024
(Assessment Year :2017-18)**

Iqbal Noor Mohamed Bijal M/s. Shoe Stopper Room No.42, 2 nd Floor Mochi Chawl 27, Mohd Ali Road Mumbai- 400 003	Vs.	Income Tax Officer, Ward 17(2)(1) Mumbai
PAN/GIR No.AEZPB3139G		
(Appellant)	..	(Respondent)

Assessee by	Shri Om Kandalkar
Revenue by	Shri H.M. Bhatt
Date of Hearing	09/05/2024
Date of Pronouncement	07/08/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 22/11/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2017-18.

2. In various grounds of appeal assessee has challenged the addition of Rs.60,00,000/- in cash deposit during demonetization period u/s.69A r.ws. 115BE.

3. The brief facts are that assessee is a dealer in footwear and was mainly into export of footwear and also making sales in the local market. He has filed his return of income at Rs.7,97,200/- on 29/03/2018. The return was revised on 17/05/2018 declaring same income. The ld. AO noticed that assessee had made cash deposits in J & K Bank and IndusInd Bank. He further noted that assessee was allotted two PANs however, assessee replied before the ld. AO that inadvertently he was allotted two PANs and on 15/03/2010 he has immediately applied for canceling of his PAN and also filed the copy of application for cancellation of PAN. Ld. AO further noted that there had been drastically jump in the sale during the demonetization period and all the cash sales have been deposited during the period of demonetization. Assessee has also filed sales tax return for the quantum of sales period from July 2016 to September 2016 to justify the deposits made out of sales. According to ld. AO, assessee could not furnish any satisfactory explanation to substantiate the genuineness of the cash receipts from the sales and their reason for revising of return of sales tax filed for the earlier quarter on 03/05/2017, accordingly, he treated cash deposit of Rs.60,00,000/- as unexplained money and assessed to tax u/s.115BBE.

4. Before the ld. CIT (A) the explanation given by the assessee was as under:-

“1. Our client is a dealer in footwear who is mainly into export of footwear and also sells some material on local basis. During FY 2015-16 relevant to AY 2016-2017 which is the year prior to the year in consideration, our client has executed an export order of

Rs. 68,90,572/- and local sales of Rs. 29,35,108/ During the year in consideration AY 2017-18 also our client had received a bulk export order on 15/02/2016 & 23/02/2016 with a commitment to supply the material within a period of three months from the date of confirmation through authorized representative of their customers in support of which we attach herewith the copies of order received for your kind perusal and record. Refer Annexure 1 Further, due the delay by the suppliers M/s. Vinayak Polymer Industries &

M/s. Anand Footwears to supply the material our client's export order was cancelled by the foreign buyers on 02/06/2016 & 23/06/2016. Refer Annexure 2 Further, our client is dependent on supply of materials on two suppliers mainly M/s. Vinayak Polymer Industries & M/s. Anand Footwears who provide them with nearly their entire requirements and as they did not fulfill their commitment to supply the material, we were perforce compelled to accept cancellation of the export order We also wrote correspondence to the export parties to accept the delay of supply of material however, we received no further correspondence from them with regards to their export order

2 Further the two parties with whom our client had placed the order commenced supply of material from July 2016 inspite of our request for cancellation of order and in fact they supplied the entire requirement from July 2016 to October 2016 and requested us to accept delivery and sell the same through some other export order We perused the export market however, due to recession in the countries from where we had received the order we were unable to procure any other party willing to purchase the materials for export. Our client's shop is barely 540 sq.ft and in a low lying area which floods on several occasions and since we were unable to procure any other buyer we requested the parties to cancel our purchase order

3 Due to our long standing relations with the purchase parties we were compelled to accept the delivery of goods for which we received the requisite purchase invoices, packing slips and transport receipts evidencing the purchase of materials by us in the months of July to October 2016 in support of which we enclosed herewith the purchase bills, transport receipts and

details of purchases made by us from them in the FY 2016-17 along with a list of purchase bills. Refer Annexure 3. Our clients were compelled to sell the materials on retail cash basis as this volume of material could not be stored by them in their shop. In addition, the purchase parties had also agreed to extend credit in respect of these invoices which would be payable by us only after nine months from the date of supply of materials by them.

4 Our client then disposed of the stock by selling the goods so received through local cash sales and street hawkers in the vicinity of their shops in cash which is also been disclosed as cash sales in the chart as provided in Annexure 4. Further, the same has also been disclosed in the VAT returns filed by our client periodically and copies the VAT returns filed for the period 01/04/2016 to 31/03/2017 are enclosed herewith evidencing the sale of the material purchased. Please refer Annexure 5

5. The Learned AO in his assessment order para 12 mentioned "Further, it is also noted that the assessee had revised his sales tax returns for the quarter for the period from July 2016 to September 2016 on 03.05.2017 This is the same quarter in which the cash sales, as per assessee, was increased. The assessee was requested to provide the reason for revise the sales return. However, the same was not provided by the assessee." to which our reply is that in the original and revised VAT returns for the period July 2016 to September 2016 reflected the identical sales figure at Rs. 54,83,235/- however, the return was revised only because of the change in the amount of purchase from the suppliers of Rs. 5,28,192/- from M/s. Anand Footwears and another of Rs. 4,44,600/- from M/s. Vinayak Polymer Industries, both these purchase bills were inadvertently not included in the original VAT return for the period July 2016 to September 2016. Copy of the original VAT return and revised return filed on 21/01/2017 & 03/05/2017 respectively is enclosed herewith refer Annexure 6.

6.....

7. The addition made by the Learned Assessing Officer by merely stating that "Further, the assessee was asked to produce the documentary support in respect of his claim of cash received due

to cash sales. The assessee could not furnish the details of any identifiable person or PAN from whom he had received. It is nearly impossible to assume that just before the demonetization period the cash sales was in bumper. The all the cash was in old notes which was deposited in the account from 10.11.2016 to 16.11.2016." is incorrect. The entire source of depositing of the cash during the demonitisation period is fully explained in the sales and purchase chart given above and cannot be brushed aside by merely stating that there was bumper cash sale before the demonetization period. The other statement that cash was in old notes deposited from 10/11/2016 to 16/11/2016 would normally be there as

5. The ld. CIT(A) after detailed discussion had confirmed the said addition and also rejected the explanation regarding the abnormal sales as explained by the assessee. He also rejected the explanation regarding the export orders getting cancelled and that assessee was obliged to sell the same in the local market in Mumbai on the ground that the same is not backed by any proper evidence. The only foreign remittance with the assessee was of Rs.10,846/- from 21/04/2016 and there is no other evidence that assessee has made any advance payment to the suppliers for the purpose of export. He has also analysed the purchases which were claimed to be the stock used for cash sales from the purchases made from two parties which are as under:-

6.3 Analysis of Purchases which were claimed to be the stock used for cash sales: The cash sales have been shown as effected out of purchases made from M/s Vinayak Polymers Ltd. Jaipur as under:

Invoice Date	Invoice Number	Amount
15.07.16	VPI/201 6-1 7/309	Rs. 5,04,000/-

19.07.16	VPI/2016-17/316	Rs. 5,00,160/-
23.07.16	VPI/201 6-17/326	Rs. 4,79,520/-
25.07.16	VPI/201 6-17/329	Rs. 4,44,600/-
30.07.16	VPI/201 6-17/346	Rs. 4,11,240/-
04.08.16	VPI/201 6-17/365	Rs. 4,19,400/-
09.08.16	VPI/201 6-1 7/377	Rs. 3,52,080/-
12.08.16	VPI/201 6-1 7/392	Rs. 4,56,000/-
22.08.16	VPI/201 6-17/411	Rs. 4,47,120/-
27.08.16	VPI/201 6-1 7/431	Rs. 4,15,800/-
30.08.16	VPI/201 6-1 7/436	Rs. 4,16,400/-
03.09.16	VPI/201 6-1 7/449	Rs. 4,42,800/-
06.09.16	VPI/2016-17/461	Rs. 4,05,540/-
12.09.16	VPI/201 6-17/471	Rs. 5,54,400/-
20.09.16	VPI/201 6-17/508	Rs. 6,59,610/-
Total		Rs. 69,08,670/-

In addition, appellant has also made purchases from Anand Footwears, Jaipur as under:-

Invoice Date	Invoice No.	Amount
27.08.16	16-17/000841	Rs. 4,10,280/-
22.09.16	16-17/000936	Rs. 5,28,192/-
11.10.16	16-17/0001023	Rs.4,11,840/-
21.10.16	16-17/0001097	Rs. 7,62,588/-

30.11.16	16-17/0001264	Rs. 34,320/-
Total		Rs. 21,47,220/-

6.3.2 As per the bills raised by Vinayak Polymers Industries, the consideration for purchase had to be made within 40 days of receipt of goods. **To ascertain when the payments were effected, the following bank accounts of the appellant have been considered:**

. **Current A/c No. 03680100001113 with Jammu & Kashmir Bank, Mumbai-** Only one payment of Rs. 5,00,000/- to M/s Vinayak Polymer Industries, Jaipur on 06.04.16 has been made. It is not known whether this payment is advance for the purchase transactions made above or was towards earlier outstanding liability. Nil payment to Anand Footwears has been made from this account.

. **A/c No. 35970200022935 with Bank of Baroda, Mumbai-** nil payment to either of the two entities.

. **Current A/c No. 250113031966 with Indus Ind Bank, Mumbai-** a payment of Rs. 20,00,000/- has been to Vinayak Polymer Industries, Jaipur on 23.01.17 vide cheque no. 219601 through RTGS. However, this payment is unrelated to the above purchases as these funds have been sourced from Foreign Remittance obtained through TT for an export order amounting to Rs. 70,42,628/- dated 20.01.17.

6.3.3 Thus, while appellant claims to have made purchases amounting to Rs. 90,55,890/- during the period July to October, 2016 from the two entities, however, 'nil' payment was made during the entire financial year. This financial behaviour of the appellant and the two entities is completely against the Test of Human Probability. If a transaction is genuine, then supplier seeks immediate payment as per the terms of the contract and in case of any delay, interest is charged for the period of delay. However, all these elements which make a transaction genuine and authentic, are completely absent in purchase transactions with Vinayak

Polymer Industries & Anand Footwears. Hence, these Purchases become highly doubtful

6.3.4 It is pertinent to mention that demonetisation was a highly unusual event that presented a unique situation where the sales were inflated to justify the cash deposit during demonetisation to be out of genuine sources and not from unaccounted income while the usual behaviour is to under report taxes by suppressing the sales. Seen in this backdrop, it is highly probable that purchases, to justify the non-existent sales, were hiked artificially. In assessment, Assessing Officer has held that quantum of SBNs to the tune of Rs. 20,00,000/- was related to cash sales. Accordingly, in appeal effect order, applying the GP rate as shown in the P&L A/c, the proportionate purchases (corresponding to sales of Rs. 20,00,000/- which have been allowed in assessment) out of Rs. 90,55,890/- are to be retained and rest are to be omitted.

6.4 Insufficient opening cash balance: As the opening cash balance at the start of the financial year, as per appellant's own submission, was only Rs. 10,67,293/-, the same was grossly insufficient to cover up the cash purchases to the tune of Rs. 90,34,890/- claimed to be made from Vinayak Polymer Industries and Anand Footwears.

Accordingly, after detailed examination and analysis Id. CIT(A) has confirmed the addition made by the Id. AO.

6. Before us Id. Counsel for the assessee submitted that assessee had no source of income except for his business of purchase and sale of footwear where assessee has explained the reasons that he has purchased the footwear to fulfill the export orders, however, once there was a delay in supply of materials by the suppliers, the export order got cancelled and assessee had to sell these footwear in the local market as he has to make the payment to the suppliers. In support of his contentions he had shown various documents to justify the sales and also placed

copy of cash book and bank statements showing day to day sales which have been declared in the sales tax return also. The voluminous documents filed by the assessee are appearing in the paper book. He further submitted that assessee had made the payment to the manufacturers only after affecting the sale for which following details have been given.

Summary of payments made to Manufacturers

Payments made to Anand Footwears		
Date	Bank details	Amount
19.07.2018	IndusInd Bank A/C - 250 11 303 1966	Rs.21,01,041/-
Payments made to Vinayak Polymer Industries		
Date	Bank details	Amount
06.04.2016	Jammu and Kashmir Bank Current A/C - 0368010100001113	Rs.5,00,000/-
23.01.2017	IndusInd Bank A/C - 250113031966	Rs.20,00,000/-
30.08.2017	IndusInd Bank A/C - 250113031966	Rs.15,00,000/-
01.08.2018	IndusInd Bank A/C - 250113031966	Rs.15,00,000/-
29.08.2018	Jammu and Kashmir Bank Current A/C - 0368010100001113	Rs.3,00,000/-
12.11.2018	Jammu and Kashmir Bank Current A/C - 0368010100001113	Rs.2,00,000/-
16.11.2018	IndusInd Bank A/C - 250113031966	Rs.3,00,000/-
25.03.2019	IndusInd Bank A/C - 250113031966	Rs.10,00,000/-
02.08.2019	IndusInd Bank A/C - 250113031966	Rs.3,00,000/-
15.10.2019	IndusInd Bank A/C - 250113031966	Rs.2,00,000/-

29.11.2019	Bankof Baroda Current A/C - 35970200022935	Rs.2,00,000/-
Total		Rs.80,00,000/-

7. He has also filed the copy of ledger accounts of these parties alongwith monthly sales. Thus, he submitted that the entire source of cash deposits was out of business only and these sales are reflected in the final profit and loss account also and he has also tallying with the sales tax return. The copy of which has also been placed in the paper book. The sales tax was revised only to incorporate the correct figure of purchase and nothing related to sales.

8. On the other hand, ld. DR referred to reasoning given by the ld. CIT (A) given in the impugned orders and submitted that assessee's explanation have been found to be incorrect.

9. We have heard rival submissions and perused the relevant finding given in the impugned orders. The sole controversy is whether assessee could explain the source of cash deposit in the bank account. As stated above assessee is into the business of export and sale of footwear. From the perusal of the documents, it is seen that assessee had filed all the details of cash book and sale details for cash sales before the authorities below. The day to day sales have been duly recorded and assessee has also paid VAT @5.5% for each and every sale. The purchases and sales are also tallying with the sales tax return. In the earlier year i.e. for the period 01/04/2015 to 31/03/2016 it has shown sales of

Rs.99,24,859/- and for the period 01/04/2016 to 31/03/2017 he has shown sales of Rs.1,03,92,313/-. The only reason to disbelief by the ld. AO is that assessee had made huge cash sales during the month of September and October 2016 which is Rs.24.73 lakhs and Rs.42.77 lakhs respectively. From the perusal of the records it is seen that since assessee has sold the item of footwear which are wholly on cash sales as footwear sold were for petty amount. Even in the earlier year all the sales have been made through cash and in the month of December 2015 assessee had shown sales of Rs.73,26,802/-. Thus, the deposit of the cash sales in the bank account is a regular feature in the case of the assessee. Even if the explanation of the assessee which has been rejected by the ld. CIT (A) that export order was cancelled and assessee was forced to make the cash sales in the local market to honour the payment for supply of footwear which he had ordered for the export is not acceptable, but still one thing cannot be disputed that all these transactions are from the business of the assessee only, that is sale of footwear. From the sales made and deposited in the bank account assessee has given money to suppliers in the next year. He has no other source of income for making deposit in the bank account. Thus, the source of cash deposit is apparently from these cash sales made by the assessee and in support he has produced sale bills, cash book and VAT return. Thus, the entire cash deposits in the bank account out of sales cannot be confirmed. Nowhere, the ld. AO has made out that it is an undisclosed sales not tallying with the books of accounts. At the most the profit element on such

cash deposits should be added because the cash deposits have been generated out of the business of the assessee only. **Accordingly, we direct the ld.AO to apply net profit of 8% on cash deposit of Rs.60,00,000/-** which comes out to Rs.4,20,000/-. Accordingly, addition of Rs. 4,20,000/- is confirmed and balance amount is deleted.

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

Order pronounced on 7th August, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER
Mumbai; Dated 07/08/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai