

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
& SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.129/Ahd/2024
(Assessment Year: 2017-18)

Premier Wholesaler Pvt. Ltd., B/h Minotti Showroom, Sindhu Bhawan Road, Devraj Farm, Bodakdev, Gujarat-380054	Vs.	Income Tax Officer, Ward-3(1)(4), Ahmedabad
[PAN No.AAHCP4228P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Hem Chhajed, A.R.
Respondent by:	Shri Ashok Kumar Suthar, Sr. DR
Date of Hearing	05.08.2024
Date of Pronouncement	12.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The present appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi under Section 250 of the Act, vide order dated 28.11.2023, for Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeal:

- “1. The order passed by Ld. CIT(A) is against law, equity and justice.
2. The Ld. CIT(A) has erred in law and facts in upholding the addition made U/S 68 of the Act for Rs. 53,13,000/- by the Ld. A.O. considering cash sales as unexplained cash credit.
3. The Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. A.O. of invocation of section 115BBE of the Act.
4. The appellant Craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”

3. The brief facts of the case are that the assessee had filed original return of income for A.Y. 2017-18 declaring total income of Rs. 7,34,910/-. The said return of income was processed under Section 143(1) of the Act. Subsequently, the Assessing Officer noted that as per information available, the assessee had deposited cash of Rs. 53,13,000/- during demonetization period (09.11.2016 to 30.12.2016) on various dates in two bank accounts maintained with Punjab National Bank. The assessee was asked to submit details of cash deposited during demonetization period and in response thereto, the assessee vide letter dated 28.11.2019, submitted copy of cash book showing daily balance for the year under consideration. Thereafter, the Assessing Officer issued another show-cause notice dated 01.12.2019, asking the assessee to furnish various details. In response, the assessee filed written submission on 06.12.2019 and submitted copy of cash book and bank book for Assessment Years 2015-16, 2016-17 and 2017-18, details of sales and purchases on monthly basis for A.Y. 2017-18 and copy of sale bills in relation to goods sold to customers for A.Y. 2017-18. However, the Assessing Officer observed that the assessee did not produce original cash bills in relation to goods sold to customers in cash alongwith accompanying documents such as delivery challan, details of item wise and quantity monthly sales for A.Y. 2017-18. The Assessing Officer issued notices under Section 133(6) of the Act to eight parties to, verify the genuineness of debtors and cash sales made to these parties. However, out of these eight parties only two parties confirmed to have paid cash against goods supplied by the assessee. Accordingly, the

Assessing Officer was of the view that the assessee was not able to furnish corroborative documentary evidences to prove the cash sales made to parties were genuine and the stated to have been amount received from the debtors or advances received against goods sold were not genuine and therefore, the source of cash deposits made during the demonetization period remained unexplained. Accordingly, the Assessing Officer made an addition of Rs. 53,13,000/- to the income of the assessee with the following observation:

“The assessee has given sufficient opportunity to furnish the requisite details/documents, however, the assessee has failed to furnish the same. It is common that when once a business concern sell goods, it keeps copy of sale bills with it. The assessee has however not able to produce the original sale bills with copies of delivery challan, etc. despite specifically asked for. Thus, it is seen that despite sufficient opportunities given to the assessee, the assessee has failed to furnish details/documents and explanation to the source of cash deposits made during the demonetization period. The assessee company has failed to comply with the terms of show cause notice and summons issued by this Office. Considering the above facts and elaborate discussion, it is evident that assessee failed to establish source and nature of cash deposits made in Bank account bank a/c. no.0960002105017515 and bank a/c. no.0960008705002713 maintained with Punjab National Bank, during the F Y 2016-17, relevant to Assessment Year 2017-18. It is held that the source of cash deposits has not been fully explained by the assessee. It is therefore apparently clear that the cash deposits made during F Y 2016-17 relevant to A Y 2017-18 have remained unexplained. However, considering that the assessee has submitted other details/documents which establish the business activities of the assessee and sales also, only the cash deposits made during the demonetization period is considered as unexplained. The assessee has failed to establish that the cash deposits made during the demonetization period were made from its normal business. Where the assessee is unable to prove that in its normal business or otherwise, it was possessed of so much cash, it is held that the assessee started under a cloud and must dispel that cloud to the reasonable satisfaction of the assessing authorities to hold that the amount represented income from some undisclosed source. Therefore, in this case, provisions of Section 68 of I T Act, 1961 are clearly attracted.

In the present case, the assessee had deposited Cash in the bank account no. 0960002105017515 and bank a/c. no.0960008705002713 maintained with Punjab National Bank amounting to Rs.53,13,000/- during the demonetization period which is treated as unexplained cash credits in the books of accounts of the assessee. The assessee has recorded the said credits in its books but has not offered any acceptable

and cogent explanation regarding the source of such credit amounts appearing in its bank account.

In the present case, the assessee has deposited Cash in its bank account as stated above in the body of the order which is recorded in its books of accounts but such credits are not explained by the assessee with corroborative documentary evidences to the source of such credit amounts as the assessee has not complied the terms of show cause notice, notice u/s. 142(1) and summons u/s.131 issued of the IT. Act to the director of the assessee-company who is equally responsible for the act of the assessee-company. Thus, it is seen that the assessee has failed to prove this fact that the Cash deposited during demonetization period are normal business receipts by producing supporting documentary evidences and therefore, I hold that the amount of Deposits made in the bank account during demonetization period, has represented unexplained cash credits from undisclosed sources. The assessee has concealed its true which otherwise is taxable.

The assessee has made cash deposits amounting to Rs.53,13,000/- in bank account a/c. no.0960002105017515 and bank a/c. no.0960008705002713 maintained with Punjab National Bank during the demonetization period which has remained unexplained. The assessee failed to give any satisfactory explanation about the source of such cash deposits made by providing therewith supporting documentary evidences as stated above, hence the cash deposits amount appearing in the said Bank Accounts of **Rs.53,13,000/-** is deemed as unexplained cash credits u/s.68 of the Income Tax Act, 1961 and added to the total income of the assessee. **The said addition made is hereby taxed u/s 115 BBE of the Act at the rate of 60%.**

4. In appeal Ld. CIT(A) dismiss the appeal of the assessee on account of non-appearance with the following observations:

“5.2 In the above written submissions made by the appellant in its statement of facts, one of the contention of the appellant is that the assessing officer had not considered the request of the appellant seeking time to submit further details while issuing the assessment order on 23.12.2019. In this regard, it is pertinent to mention here that that the assessing officer issued several notices during the course of assessment proceedings calling for information and the appellant also had submitted replies vide its letters dated 13.09.2019, 20.09.2019, 06.11.2019, 07.11.2019, 28.11.2019 and 06.12.2019 as furnished in its written submissions made in statement of facts. It shows that the assessing officer issued several notices and the appellant also went on making partial written submissions or adjournments on several occasions as mentioned above. This proves that the appellant had been given sufficient time to submit its complete details during the course of assessment proceedings. However, the appellant, still sought further time to submit further details on 06.12.2019. However, the assessment was completed on 23.12.2019, which was after around 17 days from the last written submissions made by the appellant seeking time to submit further details. However, by the time of completion of assessment i.e. 23.12.2019, the appellant failed to submit the details as called for by

the assessing officer during the course of assessment proceedings. Therefore, the assessing officer completed the assessment with the following remarks as mention in the assessment order:

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5.3 *In view of the above, as the appellant had failed to give any satisfactory explanation about the source of cash deposits made by providing supporting documentary evidences, the assessing officer completed the assessment by passing order under section 143(3) of the Income Tax Act, 1961 dated 23.12.2019 with the assessed income of Rs.60,47,910/- for the assessment year 2017-18 after making addition of Rs.53,13,000/- towards unexplained cash credits u/s 68 of the Income Tax Act, 1961, which is ordered to be taxed u/s 115BBE of the Income Tax Act, 1961 at the rate of 60% on the proposed addition.*

5.4 *In addition to the above, in the written submissions made in statement of facts filed along with Form No.35, the appellant stated that the confirmations from the debtors would be submitted during appeal proceedings. However, during the course of appeal proceedings, several notices under section 250 of the Income Tax Act, 1961 were issued to the appellant on 24.06.2023, 22.09.2023 and 11.10.2023 though ITBA functionality, but the appellant had not availed the opportunity to make ground-wise written submissions along with documentary evidences in support of its grounds of appeal and also confirmation from the debtors as promised in the statement of facts, though aforementioned notices were duly delivered to the email of the appellant available in ITBA. The screen shots appearing in ITBA that the notices were duly /delivered to the appellant are affixed above in this order.*

5.5 *In view of the above, as the appellant failed to make written submissions along with documentary evidence(s) in support of his grounds of appeal during the course of appellate proceedings, I do not find any reason to interfere in the order u/s 143(3) of the Income Tax Act, 1961 dated 23.12.2019 in respect of addition of Rs.53,13,000/- made under section 68 of the Income Tax Act, 1961 as unexplained cash credit and also applying provisions of section 115BBE of the Income Tax Act, 1961 for computation of tax on the addition made. Accordingly, these grounds of appeal Nos. 1 & 2 are required to be dismissed.*

5.6 *Therefore, these grounds of appeal Nos. 1 & 2 are dismissed.”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

6. Before us, the Counsel for the assessee submitted that the assessee is a wholesaler of audio systems the assessee had deposited SBN amounting to Rs. 53,13,000/- in his bank accounts held with Punjab

National Bank during demonetization period, which was out of cash receipts from debtors. The cash received from cash sales and amounts received from debtors were deposited by the assessee in his bank accounts. The Counsel for the assessee submitted that the assessee maintained regular books of accounts, which are audited by independent auditor and auditor has not pointed out any defects in the books of accounts. The audited financial statements form part of the regular returns filed by the assessee. The assessee submitted various documents during the course of assessment viz. Audit Report, bank statement, cash book, bank book, confirmation of debtors, details of month wise cash deposits of cash sales in the format prescribed by the Ld. Assessing Officer, details of purchases and sales on monthly basis, sample sales bills and reconciliation of sales and purchases with VAT. Accordingly, the assessee submitted that he has discharged it's onus by submitting documentary evidence with regards to cash deposited in the bank account. The Counsel for the assessee drew our attention to Pages 99 to 119 of the Paper Book and submitted that all confirmations from the parties had been filed by the assessee before the Assessing Officer, however, such confirmations were not considered by the Assessing Officer. The Counsel for the assessee further submitted that the assessee has a substantial turnover of Rs. 3.75 crores on account of sales, which is also tallying with the VAT returns at Pages 122 of the Paper Book. The Assessing Officer has also neither doubted the sales made by the assessee, which can also be duly corroborated with the VAT return and therefore, the assessee has been able to establish that the amount

deposited in the bank accounts during demonetization period was essentially sourced out of cash sales made during the impugned period under consideration.

7. In response, the Ld. D.R. drew our attention to the fact that the Assessing Officer has categorically observed that the assessee has not produced original cash bills in relation to goods sold to customers in cash, no delivery challan has been produced for verification, the assessee has not produced details of item wise and quantity wise details of monthly sales and purchases with opening and closing stock, for impugned assessment year under consideration. Therefore, in absence of such details, the cash deposits made during demonetization vis-à-vis cash sales and cash amount received from debtors or cash amount received in advance against goods sold, could not be verified by the Assessing Officer. Further, even the Ld. CIT(A) at Para 5.4, Page 11 of his order has observed that though the assessee has stated in the written submissions made in statement of facts that the confirmation from the debtors **“would be”** submitted during appellate proceedings, however, such details evidently have not been furnished by the assessee. Therefore, clearly from the statement of facts submitted by the assessee before Ld. CIT(A), he has not yet submitted the “confirmation” from the debtors, and the statement of the assessee that the confirmation of the debtors were filed before the Ld. Assessing Officer is also factually inaccurate.

8. We have heard the rival contentions and perused the material on record. On going through the facts of the case we observe that firstly Ld. CIT(A) passed the appellate order on ex-parte basis and the assessee could not cause appearance before Ld. CIT(A) so as to be able to present it's case on merits. Secondly, the Counsel for the assessee has submitted that the assessee had made substantial amount of sales amounting to Rs. 3.75 crores during the impugned year under consideration (which is also supported by VAT returns) which have been produced before us for our records as well and it is from such cash sales that the deposits have been made by the assessee during the demonetization period, during the impugned year under consideration. The Counsel for the assessee has submitted that once the figure of sales have been accepted by the Assessing Officer, the source of cash deposits stand duly explained. However, we observe that there are certain apparent differences / discrepancies which are now noted by us from the assessment and appellate records placed before us for our consideration. While on one hand, the assessee has submitted before us that confirmation from debtors have been submitted before the Assessing Officer during the course of assessment proceedings with respect to cash sales (out of which the cash has been deposited in the bank accounts during the demonetization period), whereas the Ld. D.R. has pointed out that in the statements of fact itself the assessee has submitted before Ld. CIT(A) that the confirmation from the debtors **“would be”** submitted during the course of appellate proceedings, which was ostensibly not done in the instant case. Further, we have observed that it is a disputed fact between the

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assessee and the Revenue, wherein Revenue is contending that the assessee has not filed original cash bills in relation to goods sold to customers in cash alongwith accompanying documents such as delivery challan for the impugned assessment year as well as the assessee has not produced details of item wise, quantity wise of monthly sales, purchases with opening and closing stock for relevant period. In view of the apparent discrepancies in facts which have been pointed out before us, we are of the considered view that in the interest of justice, the matter may be restored to the file of Ld. CIT(A) for de-novo consideration and the assessee may furnish all corroborative evidences in support of it's contention before Ld. CIT(A), during the course of appellate proceedings. We clarify that we have not commented on merits of the issue arising in this appeal and all the contentions are kept open. The assessee is also directed to promptly comply with all notices of hearing and in case of any further non-compliance on part of the assessee before Ld. CIT(A), the Ld. CIT(A) shall be at liberty to pass appropriate orders in accordance with law, on the basis of material available on record.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on

12/08/2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER
Ahmedabad; Dated 12/08/2024
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad