

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

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Sudhir Kumar, Judicial Member

ITA No. 327/Del/2024 : Asstt. Year: 2017-18

Mohd. Umeed, 28, Polutry Market, Ghazipur, Delhi-110096 (APPELLANT)	Vs	Income Tax Officer, Ward-60(4), New Delhi-110002 (RESPONDENT)
PAN No. AALPU7248R		

**Assessee by : Sh. Shailesh Gupta, Adv.
Revenue by : Sh. Anshul, Sr. DR**

Date of Hearing: 26.05.2024	Date of Pronouncement: 14.08.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. PCIT, Delhi-7 dated 31.03.2021.

2. Following grounds have been raised by the assessee:

"1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining an assessment framed under section 143(3) of the Act, making an addition of a sum of Rs. 2,07,04,000/- under section 694 of the Act, on account of alleged unexplained cash deposits during demonetization period.

2. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining an addition of a sum of Rs. 2,07,04,000/- under section 694 r.w.s. 115BBE of the Act on account of alleged unexplained cash deposited in the three bank accounts of assessee - appellant, which sustenance is purely based on mere conjecture, suspicion and surmises and that too without rebutting the documentary evidences and explanation so furnished by the assessee appellant.

2.1 That the learned commissioner of Income Tax (Appeals) has failed to appreciate the fact that the books of accounts of

assessee - appellant have duly been audited (and also accepted by department) and cash deposit on similar lines have been accepted through out in past and cash sale and deposit thereof is inherent nature of assessee's poultry business. That even in the impugned assessment year, cash sales and deposit in bank thereof from April to 8s November have not been disputed by lower authorities and as such, the addition so made under section 69A is without any basis and needs to be deleted.

2.2 That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate the fact that it was due to government's demonetization policy that the assessee had to deposit the entire cash lying with it in denomination of Rs. 500 and Rs. 1000 currency notes and it is also a matter of public knowledge that subsequent to demonetization cash sales dropped substantially due to lack of currency availability in market. That all the aforesaid facts were arbitrarily brushed aside by the learned AO and CIT (A) wherein, the addition so made and sustained is contrary to material available on record.

2.3 That the adverse findings recorded by the learned CIT (A) while sustaining the impugned addition have been recorded with preconceived notions and by arbitrarily brushing aside the detailed submissions/evidences/material placed on record and also relying on irrelevant case laws, which were furnished in order to support the fact that the cash has been deposited in bank account out of the cash available in the books of accounts of assessee.

3. That the erred in learned Commissioner of Income Tax (Appeals) has grossly assessee, a fair and proper and meaningful thereby violating the principles of natural order of assessment is vitiated both on fact of being heard, justice and thus such an in law."

3. The assessee filed return of income on 29.10.2017 declaring income of Rs. 13,77,850/- which was processed u/s 143(1) of the Income Tax Act, 1961. Subsequently, the case was selected under CASS for complete scrutiny on the ground of large cash deposited. During the year under consideration, the assessee has been in the business of trading of live birds. The assessee has declared income from Business and Profession.

4. The Assessing Officer observed that the assessee deposited aggregating amounting to Rs. 2,07,04,000/- in his bank account bearing No. (I) 0464020100000014 maintained with Jammu & Kashmir Bank, account number (ii) 0040231000302 maintained with Janta Co-operative Bank and account number (iii) 09227630000384 maintained with HDFC Bank. Further, during assessment proceedings, it was observed that the assessee has not declared the bank accounts maintained with HDFC Bank and Janta Bank in his return of income. The gist of cash deposits made by the assessee is as under:

Sl. No.	Name of the Bank	Account No	Cash deposit from 09.11.2016 to 30.12.2019
1	HDFC Bank	0040231000302	24,00,000/-
2	Janta Co-operative Bank	09227630000 384	1,31,24,000/-
3	Jammu And Kashmir Bank	0464020100000014	51,80,000/-
		Total	2,07,04,000/-

5. The assessee submitted that the cash deposited during the F.Y. 2016-17 is less 87.92% of the cash sales as compared to earlier years, (approx. 91.2%). It means that during demonetization period, the assessee has not deposited excess cash.

6. The AO held that the assessee has not provided any details of the persons from whom the said cash has been received. The AO held that the bills of sales furnished on sample basis by the assessee mentions cash in the place where the name of

purchasers are to be entered. Therefore, the source of cash deposits with respect to the cash sales cannot be accepted.

7. The AO placing reliance on the judgment of Hon'ble Apex Court in the case of Roshan Di Hatti vs. CIT (SC) 107 ITR 938 and KaleKhan Mohammad Hanif vs. CIT (SC) 50 ITR 1 wherein it was held that the onus of providing the source of money found to have been received by an assessee is on him and when the nature and source of a receipt cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. The AO also relied on the judgment of Hon'ble Apex Court in the case of CIT vs. K Chinnathamban (SC) 292 ITR 682 wherein it was held that cash deposits in the bank should be explained by the assessee otherwise it is unexplained income/money.

8. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the addition of Rs. 2,07,4.000/-made by the Assessing Officer.

9. Aggrieved, the assessee filed appeal before the Tribunal.

10. Heard the arguments of both the parties and perused the material available on record.

11. The material on record reveals the following facts.

12. The cash deposits of the assessee during the three years period is as under:

Cash deposits

Month	Financial Year		
	2014-15	2015-16	2016-17
April	6,35,000	34,60,000	1,18,65,000
May	69,94,240	67,64,400	1,28,30,000
June	25,00,000	1,14,54,000	96,21,150
July	87,26,730	73,05,000	11,15,000
August	85,20,000	95,05,500	27,84,316
September	1,00,30,000	46,16,000	7,20,520
October	76,35,000	42,60,500	27,07,000
November	44,88,600	42,04,000	2,16,59,500
December	78,28,500	1,40,28,850	1,54,000
January	41,75,000	1,09,22,900	—
February	5,00,000	1,40,71,000	22,50,000
March	41,05,000	1,25,65,000	5,00,000
Total	6,61,38,570	10,31,57,150	6,62,06,486

13. For the FY 2014-15, F.Y. 2015-16 and F.Y. 2016-17, the comparative, position was as under:

Particulars	FY 2014-15 (Rs.)	FY 2015-16 (Rs.)	FY 2016-17 (Rs.)
Total cash deposit	6,61,38,570/-	10,31,57,150/-	6,62,06,486/-
Average cash deposit	55,11,547/-	85,96,429/-	55,17,207/-
Lowest deposit in a month during the year	5,00,000/- in Feb, 2015	34,60,000/- in April, 2015	1,54,000/- in Dec, 2016
Highest deposit in a month	1,00,30,000/- in Sept, 2014	1,40,71,000/- in Sept, 2015	2,16,59,500/- in Nov, 2016
Deposit in November	44,88,600/-	42,04,000/-	2,16,59,500/-
Deposit in December	78,28,500/-	1,40,28,850/-	1,54,000/-

14. The opening cash in hand as on 09.11.2016 was Rs.2,09,55,018/- and the cash deposits were to the tune of Rs.2,07,04,000/-.

15. Further, we have also gone through the month-wise cash and credit sales, month-wise purchase and month-wise cash deposits in three years financial years i.e. F.Y. 2014-15, F.Y. 15-16 and F.Y. 2016-17 which are as under:

FY 2014-15

FY 2014-15	SALES		TOTAL SALES	CASH DEPOSIT	MONTHWISE PURCHASES
	CASH SALES	CREDIT SALES			CASH/CREDIT
Apr-14	45,84,716.00	1,02,78,465.00	1,48,63,181.00	6,35,000.00	1,44,54,129.00
May-14	52,14,13000	1,14,02,714.00	1,66,16,844.00	69,94,240.00	1,61,58,520.00
Jun-14	43,41,796.00	1,54,71,060.00	1,98,12,856.00	25,00,000.00	1,92,47,583.00
Jul-14	68,71,136.00	1,24,68,256.60	1,93,39,392.00	87,26,730.00	1,88,07,189.00
Aug-14	70,13,711.00	1,55,62,046.00	2,25,75,757.00	85,20,000.00	2,19,14,546.00
Sep-14	79,84,126.00	1,68,71,236.00	2,48,55,362.00	1,00,30,000.00	2,41,73,665.00
Oct-14	77,13,230.00	1,54,12,047.00	2,31,25,277.00	76,35,000.00	2,24,71,028.00
Nov-14	66,21,774.00	1,42,01,366.00	2,08,23,140.00	44,88,500.00	2,02,48,094.00
Dec-14	58,51,652.00	1,23,86,203.00	1,82,37,855.00	78,28,500.00	1,76,97,653.00
Jan-15	49,26,687.00	99,84,165.00	1,49,10,852.00	41,75,000.00	1,44,78,596.00
Feb-15	44,13,287.00	1,20,57,411.00	1,64,70,698.00	5,00,000.00	1,60,17,408.00
Mar-15	69,84,162.00	1,56,21,045.00	2,26,05,207.00	41,05,500.00	2,19,35,225.00
TOTAL	7,25,20,407.00	16,17,16,014.00	23,42,36,421.00	6,61,38,570.00	22,76,03,636.00

FY 2015-16

FY 2015-16	SALES		TOTAL SALES	CASH DEPOSIT	MONTHWISE PURCHASES
	CASH SALES	CREDIT SALES			CASH/CREDIT
Apr-15	58,15,746.00	1,89,15,625.00	2,47,31,371.00	34,60,000.00	2,41,40,167.00
May-15	80,58,562.00	2,25,41,587.00	3,06,00,149.00	67,64,400.00	2,98,77,556.00
Jun-15	98,72,585.00	2,79,78,416.00	3,78,51,001.00	1,14,51,000.00	3,70,13,415.00
Jul-15	94,15,870.00	2,14,78,956.00	3,08,94,826.00	73,05,000.00	3,02,21,578.00
Aug-15	1,05,87,416.00	3,04,08,593.00	4,09,96,009.00	95,05,500.00	4,01,69,785.00
Sep-15	76,22,158.00	2,46,28,741.00	3,22,50,899.00	46,16,000.00	3,12,38,840.00
Oct-15	71,26,856.00	2,57,89,546.00	3,29,16,402.00	42,60,500.00	3,21,58,378.00
Nov-15	80,87,415.00	2,98,51,506.00	3,79,38,921.00	42,04,000.00	3,70,67,825.00

Dec-15	94,52,821.00	2,98,75,614.00	3,93,28,435.00	1,40,28,850.00	3,84,25,437.00
Jan-16	1,08,45,623.00	2,84,14,562.00	3,92,60,185.00	1,09,22,900.00	3,83,42,502.00
Feb-16	1,88,24,415.00	3,25,36,403.00	4,63,60,818.00	1,40,71,000.00	4,52,25,291.00
Mar-16	1,17,45,268.00	2,78,71,516.00	3,96,16,764.00	1,25,65,000.00	3,86,31,876.00
TOTAL	11,24,54,735.00	32,02,91,065.00	43,27,45,800.00	10,31,57,150.00	42,25,12,650.00

FY 2016-17

FY 2016- 17	SALES			CASH DEPOSIT	MONTHWISE PURCHASES
	CASH SALES	CREDIT SALES	TOTAL SALES		
Apr-16	1,38,74,562.00	2,41,58,750.00	3,80,33,312.00	1,18,65,000.00	3,69,75,389.00
May-16	1,58,54,384.00	2,98,74,656.00	4,57,29,040.00	1,28,30,000.00	4,44,60,817.00
Jun-16	1,03,87,168.00	3,61,58,710.00	4,65,45,878.00	96,21,150.00	4,52,55,716.00
Jul-16	55,84,158.00	3,44,51,168.00	4,00,35,326.00	11,15,000.00	3,89,20,029.00
Aug-16	78,71,628.00	3,81,71,686.00	4,60,43,314.00	27,84,316.00	4,47,23,508.00
Sep-16	69,15,286.00	2,97,87,485.00	3,67,02,771.00	7,20,520.00	3,56,76,982.00
Oct-16	82,18,205.00	3,48,41,062.00	4,30,59,267.00	27,07,000.00	4,28,66,829.00
Nov-16	21,74,584.00	1,98,74,156.00	2,20,48,740.00	2,16,59,500.00	2,14,18,628.00
Dec-16	6,87,462.00	2,41,57,469.00	2,48,44,931.00	1,54,000.00	2,41,39,982.00
Jan-17	9,71,562.00	3,08,87,415.00	3,18,58,977.00	-	3,09,66,341.00
Feb-17	14,91,741.00	3,35,18,333.00	3,50,10,074.00	22,50,000.00	3,40,36,381.00
Mar-17	13,75,160.00	3,58,58,415.00	3,72,33,575.00	5,00,000.00	3,61,98,628.00
TOTAL	7,54,05,900.00	37,17,39,305.00	44,71,45,205.00	6,62,06,486.00	43,46,39,230.00

16. From the above said table it is very clear that cash deposited in various banks during the three financial years is as under:

Year	Cash Deposit	Cash Sales	Total Sales	% of cash deposit to cash sales	% of cash deposit to total sales
2014-15	6,61,38,570.00	7,25,20,407.00	23,42,36,421.00	91.20	28.24
2015-16	10,31,57,150.00	11,24,54,735.00	43,27,45,800.00	91.73	23.84
2016-17	6,62,06,486.00	7,54,05,900.00	44,71,45,205.00	87.92	14.81

17. From the above said table it is apparent that the cash has been deposited in the above said years from 87, 92 to 91.20% of cash sales, it is 15% to 28% of the total sales. Cash is being deposited as per trends & practice of business. Cash deposited during the FY 2016-17 is less 87.92% of the cash sales as

compared to earlier years of 91.2%. It means that during the period in question, the cash deposits of the assessee is not at variance with the other years.

18. Further, the cash in hand position of the assessee is as under:

FY 2016-17	SALES			CASH DEPOSIT	MONTHWISE PURCHASES	Cash hand in (in Rs.)
	CASH SALES	CREDIT SALES	TOTAL SALES			
Apr-16	1,38,74,562.00	2,41,58,750.00	3,80,33,312.00	1,18,65,000.00	3,69,75,389.00	20,09,562
May-16	1,58,54,384.00	2,98,74,656.00	4,57,29,040.00	1,28,30,000.00	4,44,60,817.00	50,33,946
Jun-16	1,03,87,168.00	3,61,58,710.00	4,65,45,878.00	96,21,150.00	4,52,55,716.00	57,99,964
Jul-16	55,84,158.00	3,44,51,168.00	4,00,35,326.00	11,15,000.00	3,89,20,029.00	1,02,69,122
Aug-16	78,71,628.00	3,81,71,686.00	4,60,43,314.00	27,84,316.00	4,47,23,508.00	1,53,56,434
Sep-16	69,15,286.00	2,97,87,485.00	3,67,02,771.00	7,20,520.00	3,56,76,982.00	2,15,51,200
Oct-16	82,18,205.00	3,48,41,062.00	4,30,59,267.00	27,07,000.00	4,18,66,829.00	2,70,62,405
Nov-16	21,74,584.00	1,98,74,156.00	2,20,48,740.00	2,16,59,500.00	2,14,18,628.00	75,77,489
Dec-16	6,87,462.00	2,41,57,469.00	2,48,44,931.00	1,54,000.00	2,41,39,982.00	81,18,951
Jan-17	9,71,562.00	3,08,87,415.00	3,18,58,977.00	-	3,09,66,341.00	90,82,513
Feb-17	14,91,741.00	3,35,18,333.00	3,50,10,074.00	22,50,000.00	3,40,36,381.00	83,24,254
Mar-17	13,75,160.00	3,58,58,415.00	3,72,33,575.00	5,00,000.00	3,61,98,628.00	91,99,414
TOTAL	7,54,05,900.00	37,17,39,305.00	44,71,45,205.00	6,62,06,486.00	43,46,39,230.00	-

19. On going through the entire factual information available on record and not disputed by the revenue, it can be held that the assessee had sufficient cash balance as per the accepted books of accounts and hence, the cash deposits cannot be treated as undisclosed income.

20. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 14/08/2024.

Sd/-

(Sudhir Kumar)
Judicial Member

Dated: 14/08/2024

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member